

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
FOR THE COUNTY OF YAVAPAI

BY:

Jaqueline Harshman

STATE OF ARIZONA,)

Plaintiff,)

vs.)

JAMES ARTHUR RAY,)

Defendant.)

Case No. V1300CR20108-0049

REPORTER'S TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE WARREN R. DARROW
CONTINUED ORAL ARGUMENT/EVIDENTIARY HEARING
RE MOTION TO REDUCE BAIL and
MOTION TO STRIKE EX PARTE PLEADING
FEBRUARY 24, 2010
Camp Verde, Arizona

REPORTED BY
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AZ CR NO. 50619
CA CSR NO. 8335

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1 Proceedings had before the Honorable
2 WARREN R. DARROW, Judge, taken on Wednesday,
3 February 24, 2010, at Yavapai County Superior Court,
4 Division Pro Tem B, 2840 North Commonwealth Drive,
5 Camp Verde, Arizona, before Mina G. Hunt, Certified
6 Reporter within and for the State of Arizona.

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P R O C E E D I N G S

THE COURT: This concerns cause No. V1300CR
20108-0049, State of Arizona versus James Arthur
Ray.

I'm going to announce the formal
appearances first. Mr. Ray is present with his
attorneys, Mr. Li, Mr. Kelly and Ms. Do.

The state is represented by Ms. Polk and
Mr. Hughes. I think there are other people
present. I want to announce who else is present. I
thought I had some representatives here. I think
there are some people on the telephone, though.

George and Jenny Brown, are you there?

MR. BROWN: Yes, we are, Your Honor.

MS. BROWN: Yes.

THE COURT: I don't know if there is anybody
else that's appearing telephonically or not.

MR. MAGNANINI: Yes, Your Honor. I am Robert
Magnanini from the law firm of Stone & Magnanini.
And we represent George and Jenny Brown.

THE COURT: Some people also present.

Mr. Hughes?

MR. HUGHES: Thank you, Your Honor. Lily
Clark, who is here for her relative, Liz Neuman, who
is present as well.

1 THE COURT: Thank you.

2 MR. CLARK: Your Honor, Shannon Clark from the
3 law firm of Gallagher & Kennedy on behalf of the
4 Shore family.

5 THE COURT: Thank you, sir.

6 Mr. Hughes, you were presenting the
7 state's evidence in the motion for reduction of
8 bond. You may continue.

9 MR. HUGHES: Thank you, Your Honor. Your
10 Honor, at this time the state rests.

11 THE COURT: Okay.

12 Mr. Li?

13 MR. LI: My understanding was that Mr. Hughes
14 was planning to put on some other testimony. If
15 that's not the case, I'll hand over the mic to
16 Ms. Do.

17 MS. DO: Good afternoon, Your Honor. Mr. Ray
18 will call Alex Smyth to the stand, please.

19 THE COURT: Sir, please stand where the bailiff
20 is directing you.

21 ALEX SMYTH,
22 having been first duly sworn upon his oath to tell
23 the truth, the whole truth, and nothing but the
24 truth, testified as follows:

25 THE COURT: Sir, please start by stating and

1 spelling your full name.

2 THE WITNESS: Alex Smyth, S-m-y-t-h.

3 THE COURT: Ms. Do?

4 MS. DO: Thank you. May I proceed, Your
5 Honor?

6 THE COURT: Yes.

7 DIRECT EXAMINATION

8 BY MS. DO:

9 Q. Good afternoon, Mr. Smyth.

10 A. Good afternoon.

11 Q. You are the financial controller for
12 James Ray International?

13 A. Yes.

14 Q. I'll be referring to that company by its
15 acronym, JRI. You've been the financial controller
16 for JRI since February of 2008; is that correct?

17 A. That's correct. Yes.

18 Q. And in that capacity do you know an
19 individual in this courtroom named Mr. James Ray?

20 A. I do.

21 Q. Do you know him in the capacity as the CEO
22 and the founder of JRI?

23 A. That's correct.

24 Q. And from what you know, do you know that
25 Mr. Ray started this company with nothing more than

1 his talent and his labor?

2 A. That's correct.

3 Q. You are the financial controller for JRI,
4 but do you have other clients as well?

5 A. Yes, I do.

6 Q. Could you tell us some of those clients.

7 A. USA Baby, retail furniture store in
8 San Diego and Utah. Crown Books, retail bookstore
9 in San Diego and Los Angeles. Cobrin Restoration
10 Company in San Diego. Magnolias Restaurant in
11 San Diego. A few others.

12 Q. Thank you. How long have you been in
13 accounting, sir?

14 A. Since 1990.

15 Q. And at this moment are you employed by
16 Mr. Ray in any capacity?

17 A. I'm an independent contractor as Smyth
18 Accounting Service for JRI.

19 Q. Thank you.

20 MS. DO: Your Honor, at this time may I
21 approach the witness?

22 THE COURT: Yes.

23 MS. DO: Thank you.

24 Q. Sir, I'm going to hand you what has been
25 previously marked as Defense Exhibit 6. It's

1 entitled "Declaration of Alex Smyth in Support of
2 Motion for Reduction of Bail." Do you recognize
3 that document?

4 A. Yes, I do.

5 Q. And is that the declaration that you
6 submitted to this court in connection to this
7 hearing?

8 A. Yes.

9 Q. You had an opportunity to review the
10 contents of your declaration and exhibits attached
11 thereto?

12 A. Yes.

13 Q. And it is all true and accurate; correct?

14 A. Yes, it is.

15 Q. Let me have you briefly, if you will,
16 explain to this court what your duties and
17 responsibilities are as financial controller for
18 JRI.

19 A. Primarily it's to oversee the accounting
20 department and receive the personnel that do the
21 accounts receivable, accounts payable; to produce
22 monthly financial statements; to produce year-end
23 financial statements, quarterly financial
24 statements; to assure all the bank statements are
25 reconciled on a monthly basis. Those are the basic

1 duties.

2 Q. So it's your responsibility to know what
3 assets JRI has or doesn't have; correct?

4 A. That's correct.

5 Q. And so for some of us who don't know
6 accounting terms, when you say "accounts
7 receivable," you're talking about money into the
8 company; correct?

9 A. Money that is owed to the company.

10 Q. All right. And accounts payable is money
11 that is owed by the company out?

12 A. That's right.

13 Q. Are you also responsible for generating
14 financial statements that are called "profit and
15 loss statements"?

16 A. Yes.

17 Q. Would you please briefly explain what
18 those are.

19 A. Profit and loss statement shows the total
20 revenues earned by the company minus the total
21 expenses in a given period, coming up with a net
22 profit for that period.

23 Q. Thank you. And as financial controller
24 for JRI, would you, then, have access and control to
25 various financial records including the corporate

1 tax returns, the profit/loss statements, investment
2 account, statements of that sort?

3 A. Yes.

4 Q. Now, you are the financial controller for
5 Mr. Ray's corporation. Do you have any
6 responsibilities to Mr. Ray's personal books?

7 A. It is technically part of my job
8 description, although I had limited time to attend
9 to them. So I would do the minimum amount of
10 reconciling certain accounts for Mr. Ray's personal
11 books.

12 Q. And within that limited role that you had
13 for his personal books, you did, however, manage and
14 maintain his accounts; correct?

15 A. Yes.

16 Q. And that would include any investment
17 accounts that he has with the firm of Smith Barney?

18 A. That's correct.

19 Q. Any bank accounts that he has? Yes?

20 A. Yes.

21 Q. All right. Would you also have access and
22 control to Mr. Ray's financial records such as
23 income tax returns, both federal and state?

24 A. Yes.

25 Q. W-2s?

1 A. Yes.

2 Q. Let me first talk to you about the
3 disclosure of financial records that we've seen in
4 this case. You met Mr. Li and I for the first time
5 yesterday; correct?

6 A. That's correct.

7 Q. But prior to that date you and I have had
8 many, many phone conversations, have we not?

9 A. Yes.

10 Q. And in those phone conversations, what
11 has, essentially, been the nature of my phone call
12 to you?

13 A. You were requesting various types of
14 accounting documents and information.

15 Q. And in the course of the last couple of
16 weeks, would you agree with me that at my request
17 you've produced volumes of financial records in this
18 case?

19 A. Yes.

20 Q. And during my request of those volumes of
21 financial records, did you learn at whose request
22 ultimately those records were being produced?

23 A. Yes.

24 Q. And what was that?

25 A. That was for the sake of this case, this

1 hearing.

2 Q. Yes. But do you know which party was
3 asking for the disclosure of these financial
4 records?

5 A. Mr. Ray's defense party.

6 Q. Okay. Let me ask you this: Have I told
7 you that it was the state requesting those records?

8 A. Yes.

9 Q. All right. And has Mr. Ray at any time
10 when I asked you for these records ever instructed
11 you not to disclose his financial records?

12 A. Never.

13 Q. Did it appear to you that Mr. Ray was
14 fully cooperative and agreed to full disclosure --

15 MR. HUGHES: Objection.

16 MS. DO: -- of his financial affairs?

17 MR. HUGHES: Calls for speculation.

18 THE COURT: Overruled.

19 THE WITNESS: One more time?

20 Q. BY MS. DO: Sure. Did it appear to you,
21 based upon my conversations with you and ultimately
22 what was done, the production of records in this
23 case, that Mr. Ray was cooperative and in agreement
24 of full disclosure of his financial affairs?

25 A. Yes.

1 Q. Did he ever instruct you not to cooperate?

2 A. Never.

3 Q. And as a result, would you agree with me
4 that literally a box or so of financial records have
5 been produced to the state?

6 A. At least.

7 Q. You were present during Mr. Echols's
8 testimony yesterday, were you not?

9 A. Yes, I was.

10 Q. And you sat through the entirety of his
11 testimony?

12 A. Yes, I did.

13 Q. Did it appear to you that based on what
14 you heard that everything that Mr. Echols testified
15 to -- his conclusions and his opinions -- were all
16 based upon record that were voluntarily produced by
17 Mr. Ray in this case?

18 A. Yes.

19 Q. You heard Mr. Echols testify regarding the
20 net worth statement. Do you remember that?

21 A. Yes.

22 Q. And did it appear to you that Mr. Echols
23 seemed to be relying primarily on this net worth
24 statement to reach the conclusions that he offered
25 to this court?

1 A. Yes.

2 Q. Have you heard or seen such a net worth
3 statement prior to today's date?

4 A. No.

5 MS. DO: May I approach again, Your Honor?

6 THE COURT: Yes.

7 Q. BY MS. DO: I'm going to hand you what has
8 been marked as, I believe, Defense Exhibit 4,
9 declaration of Luis Li in support of the motion.
10 Could you -- would you please turn to the page that
11 I have tabbed. You are now looking -- for the
12 record, you are now looking at what is marked as D
13 to the declaration of Luis Li. And that's
14 Exhibit 4.

15 Do you recognize the document that you're
16 looking at?

17 A. This is --

18 Q. You know what. One second. That's the
19 correct one. Are you looking at what's called a
20 "net worth statement"?

21 A. Yes.

22 Q. Have you seen this document before?

23 A. This is the first time.

24 Q. All right. And looking at -- take your
25 time too if you need to review it.

1 Looking at this net worth statement, do
2 you know who created it?

3 A. I believe it must have been created by
4 Michael Thai of ICO Corporation, Mr. Ray's financial
5 advisor.

6 Q. Would you tell the Court what Michael Thai
7 does for Mr. Ray.

8 A. From my understanding, he manages
9 Mr. Ray's financial investments. That's pretty much
10 all I know.

11 Q. Okay. But he's not Mr. Ray's accountant;
12 correct?

13 A. No.

14 Q. He doesn't manage the books for Mr. Ray?

15 A. No, he does not.

16 Q. This net worth statement -- do you have
17 any idea where Mr. Thai would have obtained the data
18 upon which he generated this statement?

19 A. He may have requested some information
20 from me from time to time, which I would provide to
21 him.

22 Q. Is that typical?

23 A. Yes.

24 Q. Now, going back to Mr. Echols's testimony
25 yesterday, did it appear to you that Mr. Echols

1 relied primarily on this document in offering
2 testimony regarding Mr. Ray's net worth?

3 A. Yes.

4 MR. HUGHES: Objection, Your Honor. Calls for
5 an opinion by a person who has not established his
6 credentials to be an expert. We've heard what he
7 does for a living but not his qualifications or his
8 training. So I would object on the basis of
9 irrelevant and opinion by an nonexpert.

10 THE COURT: Overruled. I'm going to assess
11 weight as appropriate in this proceeding. The rules
12 of evidence don't strictly apply. So overruled.

13 MS. DO: Thank you, Your Honor.

14 Q. Let me repeat my question. Did it appear
15 to you from yesterday's testimony that Mr. Echols
16 relied primarily, if not solely, on this document to
17 reach conclusions about Mr. Ray's net worth?

18 A. Yes.

19 Q. Now, you indicated that you believe, based
20 upon your role as financial controller, that this
21 was a document generated by financial counselor to
22 Mr. Ray; correct?

23 A. Yes.

24 Q. And that would be Michael Thai?

25 A. Yes.

1 MS. DO: And, for the record, it's spelled
2 T-h-a-i.

3 Q. Let me ask you few questions about this
4 net worth statement. First of all, can you tell me
5 what the figure is in terms of what is stated for
6 Mr. Ray's net worth?

7 A. I believe it says negative 4,206,997.

8 Q. Did it appear to you that yesterday
9 Mr. Echols drew upon the information in this
10 document and made certain modifications and then
11 reached a conclusion that Mr. Ray was worth 2.4 net?

12 A. That appears to be the case.

13 Q. And that was 2.4 million; correct?

14 A. Yes.

15 Q. I would like you to take a look at a line
16 item on that statement that is titled "Inventory
17 Assets."

18 A. Yes.

19 Q. Do you see that there?

20 A. Yes, I do.

21 Q. And under inventory assets what's the
22 dollar figure listed?

23 A. 328,628.

24 Q. Now, that amount would figure into
25 whatever number it was that Mr. Echols chose to use

1 to reach to his conclusion that Mr. Ray is worth 2.4
2 million; correct?

3 A. Yes.

4 Q. Can you tell us what inventory assets
5 are.

6 A. Inventory assets are usually what a
7 company has in stock, items which it sells which are
8 not sold yet.

9 Q. And in this case with Mr. Ray and his
10 business, what are those assets?

11 A. Those would be books, CDs, DVDs.

12 Q. Okay. And those are things that are,
13 basically, sitting somewhere that have not yet sold;
14 correct?

15 A. That's correct.

16 Q. So we're talking about \$328,926 that is
17 not liquid asset; correct?

18 A. That's right.

19 Q. That is not cashable; correct?

20 A. No.

21 Q. In any immediate sense?

22 A. Not in the immediate sense.

23 Q. In fact, can you tell us in the last month
24 how much Mr. Ray has sold of those assets.

25 A. About \$100.

1 Q. Would you please look to an item called
2 "fixed assets" on that net worth statement. And
3 let me know when you've found it.

4 A. Yes. Okay. I found it.

5 Q. And where it says "fixed assets," do you
6 see a dollar figure?

7 A. Yes, I do.

8 Q. What is that figure?

9 A. 458,129.

10 Q. Is it 468,129?

11 A. It looks to be that. Yes.

12 Q. Now, can you tell this court what fixed
13 assets are.

14 A. Fixed assets are normally office
15 equipment, computer equipment, furniture, things of
16 that nature.

17 Q. And, again, in this case, with those fixed
18 assets, specifically as to Mr. Ray's business, are
19 those assets liquid assets?

20 A. No, they're not.

21 Q. Easily cashable?

22 A. Not easily. No.

23 Q. Okay. So what we've talked about the last
24 couple minutes is about \$800,000 of assets that
25 really haven't actualized into any usable dollars

1 for Mr. Ray; correct?

2 A. That's correct.

3 Q. But that was a figure that factored into
4 the number relied on by Mr. Echols; correct?

5 A. Yes.

6 Q. In fact, of those fixed assets, would you
7 include, for example -- withdraw that. I'll come
8 back to it.

9 Did it appear to you that Mr. Echols had
10 conducted any independent investigation, any kind of
11 research, to determine what this net worth statement
12 might mean?

13 A. No.

14 Q. Did he ever call you with any questions
15 about what it might mean?

16 A. No, he didn't.

17 Q. From an accounting perspective, Mr. Smyth,
18 do you think it's appropriate and professional to
19 draw conclusions about something as significant as a
20 net worth statement based upon a document to which
21 you've done no independent investigation or
22 research?

23 MR. HUGHES: I renew my objection, Your Honor.

24 THE COURT: Sustained.

25 Q. BY MS. DO: Do you think that if somebody

1 had asked questions about what the fixed assets
2 might mean or the inventory assets might mean that
3 that might have changed or affected their opinion as
4 to a person's net worth based upon this document?

5 A. Yes.

6 MR. HUGHES: Same objection, Your Honor.

7 THE COURT: Overruled.

8 Q. BY MS. DO: Is that a yes?

9 A. That's a yes.

10 Q. One more line item on that statement. Do
11 you see a line item called "employee benefits"?

12 A. Yes, I do.

13 Q. And that figure is what?

14 A. 382 -- sorry. I can't read it clearly.
15 The best I can see is 923,578.

16 Q. Okay. And that's for an employee benefits
17 line; correct?

18 A. Yes.

19 Q. And it says -- does it say next to
20 "employee benefits" estimated future? I'm going to
21 put emphasis on that word. Estimated future pension
22 earnings?

23 A. That says estimated. Yes.

24 Q. And it says estimated future; correct?

25 A. I don't see the word "future" there, what

1 I'm looking at.

2 Q. Okay. Are you having a little difficulty
3 seeing the document? You're squinting a bit.

4 A. Yes.

5 Q. All right. Do you have any idea what that
6 employee benefits in the dollar figure of 923,000
7 and change means?

8 A. I've never seen it before.

9 Q. To your knowledge, do you know whether
10 that is a liquid asset to Mr. Ray?

11 A. I have no idea.

12 Q. Okay. You wouldn't include that in any
13 conclusion that you draw upon that document before
14 you find out what it is; right?

15 A. Yes.

16 Q. Mr. Echols yesterday talked about
17 something called a "stock value." Do you remember
18 that?

19 A. Yes, I do.

20 Q. Do you recall that that testimony was in
21 connection to a company called "Quantum Shift"?

22 A. Yes.

23 Q. Just briefly, could you explain to this
24 court from an accounting perspective when you look
25 at assets and liabilities of the company, what are

1 the three categories that you look at.

2 A. I look at assets, liabilities and equity.

3 Q. Okay. And when somebody says "stock
4 value," what does that mean?

5 A. Stock value is part of the equity section
6 of the balance sheet. Usually refers to the actual
7 capital stock that a shareholder has purchased in
8 the company.

9 Q. Okay. And so if you can try and explain
10 it to folks who don't really know accounting
11 principles here. Is stock value anything like, for
12 example, if a company is listed on New York Stock
13 Exchange, there is a stock figure? Does that make
14 sense to you?

15 A. Yes.

16 Q. Could you just explain that for us,
17 please.

18 A. Well, when in your example that would be,
19 like, the value of their shares, value of one
20 share. So a person who purchased one of those
21 shares becomes part of their own portfolio. But in
22 a case of a company like Quantum Shift, if Quantum
23 Shift were selling shares and someone bought one,
24 that would be a capital stock in the company.

25 Q. Do you have any responsibilities in

1 connection to Quantum Shift?

2 A. I do its bookkeeping, monthly bookkeeping.

3 Q. And based upon your monthly bookkeeping,
4 do you know whether Quantum Shift has any stocks or
5 shares?

6 A. It does not.

7 Q. Does it earn any revenues?

8 A. No, it doesn't.

9 Q. No income; correct?

10 A. That's correct.

11 Q. So when somebody says from an accounting
12 perspective that a company such as Quantum Shift
13 that holds title to a property allegedly with
14 1.5 million in equity that that translated into
15 1 1/2 million in stock value, what do you think
16 about that?

17 MR. HUGHES: Same objection, Your Honor.

18 THE COURT: Overruled.

19 THE WITNESS: It doesn't make sense to me
20 because I know for a fact that the company has no
21 capital stock.

22 Q. BY MS. DO: Okay. So if you were doing
23 the books for Quantum Shift, which category would
24 you put that property in? The assets, the
25 liabilities or the equity?

1 A. The assets.

2 Q. One last question about Mr. Echols's
3 testimony. You heard him include in his conclusion
4 about Mr. Ray's net worth what he believed to be
5 \$1 1/2 million in equity in that property to which
6 Quantum Shift holds title. Do you recall that?

7 A. Yes.

8 Q. You also heard him exclude from Mr. Ray's
9 net worth the liabilities of James Ray
10 International; correct?

11 A. Yes.

12 Q. To your knowledge, does Mr. Ray own both
13 companies?

14 A. He does.

15 Q. Do you see any contradiction from an
16 accounting perspective to include the asset under
17 Quantum Shift but exclude the liabilities of JRI?

18 A. Yes. I see that as a contradiction.

19 Q. Can you explain that a little further.

20 A. They have to do one or the other. If
21 you're going to include it as an asset on a net
22 worth statement, you ought to also include the
23 corresponding liabilities. You can't exclude one
24 and keep the other.

25 Q. That would be cherry picking, wouldn't

1 it?

2 A. Yes.

3 Q. Let me go over with you, if you will, so
4 we all understand Mr. Ray's companies and how they
5 were set up. We've talked about James Ray
6 International. Can you tell us how that company
7 derives its income or revenues.

8 A. James Ray International does hold seminars
9 and derives revenue from the sale of enrollments to
10 those seminars; sells tangible goods like books,
11 CDs, DVDs, and the occasional keynote speech by
12 Mr. Ray. Those are the primary sources of revenue.

13 Q. And given those primary sources of
14 revenues, who has to be out there in order for the
15 company to be earning that income?

16 A. Well, given that 99 percent of revenue
17 comes from these seminars and speeches, that Mr. Ray
18 has to be out there doing that.

19 Q. Can you tell this court what's happened to
20 JRI and its revenues since October 8, 2009?

21 A. It's dwindled down to virtually nothing.

22 Q. Is it at this moment earning any income?

23 A. Like I mentioned earlier, it has earned
24 about \$100 in product sales in the last month.

25 Q. And that's it?

1 A. That's right.

2 Q. To your knowledge, in the operating
3 account for JRI, is there any money there?

4 A. There is none.

5 Q. And Mr. Ray as an officer of that
6 corporation drew a salary, did he not?

7 A. Yes, he did.

8 Q. And since there has been no money coming
9 into JRI and the account has dwindled down to zero,
10 is Mr. Ray getting any income?

11 A. No, he's not.

12 Q. You are also familiar, are you not, with
13 the fact that in this case the Yavapai County
14 Sheriff's Department seized all the computers and
15 the servers that JRI was operating with?

16 A. Yes. I'm familiar with that.

17 Q. Okay. And to this day have they returned
18 any of those items?

19 A. Not to my knowledge.

20 Q. Can the business operate without those
21 items?

22 A. Not fully. No.

23 Q. Would you please tell this court, based
24 upon your personal knowledge of the company, what is
25 the current financial condition of JRI.

1 A. Currently the company has no revenue. It
2 has about \$400,000 in accounts payable. It has
3 about 3 million in credits owing to clients, which
4 is a liability, and \$300,000 of inventory.

5 Q. And given that state of financial
6 condition of the company, to your knowledge, has
7 Mr. Ray authorized the layoff of employees?

8 A. Yes, he has.

9 Q. Has he, essentially, been forced to shut
10 down most of the business operations?

11 A. Yes, he has.

12 Q. And has he done that because of the
13 financial condition of the company?

14 A. Yes.

15 Q. Not because he's getting ready to run;
16 correct?

17 MR. HUGHES: Objection, Your Honor.

18 THE COURT: Sustained.

19 Q. BY MS. DO: How would you describe
20 Mr. Ray's current financial conditions -- him
21 personally?

22 A. To my knowledge, he has almost nothing in
23 any of his investments accounts. That's pretty much
24 all I know.

25 Q. Any current income stream?

1 A. Not to my knowledge.

2 Q. Let me move on to the next three
3 corporations. There is a corporation that the Court
4 has heard of called "White Wolf"? Yes?

5 A. Yes.

6 Q. And that's Mr. Ray's company as well?

7 A. Yes.

8 Q. Would you tell the Court how White Wolf
9 derives its income.

10 A. White Wolf's income comes primarily from
11 royalties on book publishing and only that source.

12 Q. Do you recall yesterday Mr. Echols
13 testifying that White Wolf gets income from the
14 events?

15 A. Yes, I do.

16 Q. Is that correct or incorrect?

17 A. It's incorrect.

18 Q. As we sit here today, do you know whether
19 or not there is any money in the White Wolf
20 account?

21 A. To my knowledge, there is no money in the
22 White Wolf account.

23 Q. Any money coming into the White Wolf
24 account?

25 A. No.

1 Q. So, essentially, the income just as it is
2 with JRI, for White Wolf is -- what's the word I'm
3 looking for? No income coming in; correct?

4 A. That's correct.

5 Q. What about a company called "The Institute
6 for Global Harmony"?

7 A. It has no revenue.

8 Q. To your knowledge, is it a nonprofit or an
9 S or C corporation?

10 A. It is a nonprofit corporation.

11 Q. Is it operational?

12 A. No.

13 Q. Is there any money or assets belonging to
14 that company?

15 A. No.

16 Q. This company that we've heard of called
17 "Quantum Shift" -- you also manage the books for
18 that company; correct?

19 A. Yes.

20 Q. Mr. Ray owns it?

21 A. Yes.

22 Q. You've already told this court there is no
23 income, no revenues, to that company; correct?

24 A. That's right.

25 Q. What was the purpose for which Mr. Ray set

1 that company up?

2 A. My understanding, it was set up in order
3 to purchase real estate.

4 Q. Specific real estate?

5 A. Yes. Crest Place in Beverly Hills.

6 Q. Would that be 11964 Crest Place?

7 A. Yes.

8 Q. So other than purchasing that property,
9 there is no other purpose for Quantum Shift, is
10 there?

11 A. That's right.

12 Q. To your knowledge, was that property
13 purchased sometime in March of '09?

14 A. Yes, it was.

15 Q. To your knowledge, was the purchase price
16 of that property approximately 4 million?

17 A. Yes.

18 Q. To your knowledge, did Mr. Ray from his
19 own earnings, his own money -- did he put down
20 1 million into that property?

21 MR. HUGHES: Objection to the leading nature of
22 the questions.

23 THE COURT: Sustained.

24 Q. BY MS. DO: How much money did Mr. Ray put
25 into that property for down payment?

1 A. Approximately 1 million.

2 Q. Do you know whether or not Mr. Ray
3 expended more money remodeling the property?

4 A. Yes, he did.

5 Q. How much?

6 A. Approximately 300,000.

7 Q. Now, let me move on to Mr. Ray's
8 properties. You heard Mr. Echols testify yesterday
9 to a list of real estate owned by Mr. Ray; correct?

10 A. Yes.

11 Q. Did you hear whether or not Mr. Echols
12 made certain -- and I'll use his word --
13 "modifications" to what he believes are the fair
14 market values of those properties?

15 A. Yes, I did.

16 Q. First let me ask you, as an accountant,
17 from an accounting perspective, does an accountant
18 assess fair market value?

19 A. Not normally.

20 Q. Okay. So is an accountant qualified in
21 any way to offer an opinion about what a property's
22 fair market value is?

23 A. Not in his role as an accountant. No.

24 Q. And yet you did hear yesterday that
25 Mr. Echols offered certain opinion about what a

1 property's fair market value was?

2 A. Yes, I did.

3 Q. If I could have you turn to your exhibit
4 which was marked as Defense Exhibit 6. And would
5 you verify for this court that what is attached to
6 this declaration as G through M are documents that
7 pertain to the properties owned by Mr. Ray.

8 A. Yes, they are.

9 Q. For each of those properties, did you
10 attach to your declaration what's called a "subject
11 property history"?

12 A. Yes.

13 Q. And a mortgage statement showing the
14 principal interest owed on each property?

15 A. Yes.

16 Q. And default statuses and notices of
17 foreclosures?

18 A. Yes.

19 Q. First let me ask you, do you know what has
20 happened to Mr. Ray's properties with the exception
21 of the Crest Place property since October 8, 2009?

22 A. To my knowledge, most of them are in
23 foreclosure.

24 Q. And you've submitted notices of
25 foreclosures to document that; correct?

1 A. Yes.

2 Q. And can you tell us, if you know, why
3 those properties have gone into foreclosure or will
4 go into foreclosure?

5 A. Because the mortgage payments have not
6 been able to be paid.

7 Q. Mr. Ray hasn't been able to make those
8 monthly mortgage payments; correct?

9 A. That's correct.

10 Q. You had attached for this court as to each
11 property what's called a "subject property
12 history"?

13 A. Yes.

14 Q. Would you please, for example, turn to
15 what is attached as Exhibit G to your declaration.

16 A. Okay.

17 Q. Is that a subject property history that
18 you're looking at?

19 A. Yes, it is.

20 Q. And can you tell this court where you got
21 that subject property history from.

22 A. I got this from Dara Allen, who is
23 Mr. Ray's Realtor.

24 Q. And what was the purpose of you attaching
25 a subject property history for each property for

1 this court in your declaration?

2 A. To show the property address and its
3 purchase price and purchase date.

4 Q. All right. And in your declaration -- in
5 any place of your declaration, Mr. Smyth, did you
6 declare the true market value of any property?

7 A. No, I did not.

8 Q. Did you offer an opinion about any fair
9 market value of any property?

10 A. No.

11 Q. So when yesterday Mr. Echols was
12 testifying that he made modifications of the net
13 worth statements' conclusion about these properties
14 by using your opinion about fair market value, did
15 you know what he was talking about?

16 A. No, I didn't.

17 Q. Have you since then figured out what he
18 was talking about?

19 A. Yes. Seems to be he was drawing figures
20 from the assessment of tax information section of
21 this document.

22 Q. Okay. For example, why don't you turn to
23 Exhibit I for me. Would you tell the Court what
24 property that one pertains to.

25 A. This pertains to 4381 West Flamingo Drive,

1 Las Vegas.

2 Q. Okay. And in that particular document,
3 the property history, do you see a box called
4 "assessment and tax information"?

5 A. Yes.

6 Q. Do you know who would have produced the
7 numbers that you see in that box?

8 A. This would have been produced by the
9 Realtor.

10 Q. Okay. Do you know where the Realtor got
11 those numbers?

12 A. I have no idea.

13 Q. Using perhaps experience, would you agree
14 with me that most information regarding tax and
15 assessment would come from a county assessor's
16 office?

17 A. Probably.

18 Q. Okay. In that box do you see what's
19 called "market value"?

20 A. Yes, I do.

21 Q. And does it appear to you that Mr. Echols
22 relied on that market value figure under the county
23 assessor's information to render his opinion about
24 what the true market values of these properties were
25 yesterday?

1 A. Yes, it does.

2 Q. Would you rely on such a number?

3 A. Not necessarily.

4 Q. Do you have any idea, for example, how
5 many years passed in Nevada, for example, where that
6 property sits -- how many years passed before the
7 county assessor would make an adjustment to what it
8 calls "market value"?

9 A. Could be a long time, I guess.

10 Q. But you don't know; correct?

11 A. I don't know. No.

12 Q. And given that reason, would you rely on
13 that number?

14 A. No.

15 Q. Do you know whether or not the numbers
16 that Mr. Echols relied on from these subject
17 property history were numbers that arrived from --
18 that were arrived from independent real estate
19 appraisals of each of these properties?

20 A. Can you repeat that.

21 Q. Sure. These market value figures that
22 Mr. Echols relied on that came out of the subject
23 property history -- do you know if those numbers
24 were reached after an independent individual
25 appraisal of each real estate item?

1 A. I don't know that.

2 Q. Did it appear to you, then, that,
3 essentially, what Mr. Echols did was in what he
4 calls "modifying," he, essentially, adopted whatever
5 figure is shown by the assessor?

6 A. That appears to be so.

7 Q. All right. Let me ask you this bottom
8 line: If all of these properties with the exception
9 of the California home has gone -- have gone into or
10 will go into foreclosure, from an accounting
11 perspective, does that add value to Mr. Ray's
12 wealth?

13 A. No, it does not.

14 Q. Do you have any idea whether or not he's
15 going to recoup any of the money that he spent on
16 these properties by way of down payments?

17 A. No idea.

18 Q. Do you know if any of those properties sit
19 in states where there are antideficiencies laws and
20 he'll be responsible for differences?

21 A. I do not know.

22 Q. So from an accounting perspective, sir,
23 would you include the properties with the exception
24 of the Beverly Hills property into assessing
25 Mr. Ray's net worth?

1 A. No, I would not.

2 Q. Okay. I'd like to try and get down to
3 more of the brass tacks here. JRI. Mr. Echols
4 talked about a merchant account. Do you remember
5 that?

6 A. Yes.

7 Q. Would you explain to The Judge, this
8 court, what a merchant account is.

9 A. What we called a "merchant account" was
10 simply a Wells Fargo bank account into which the
11 credit card payments from clients would come from
12 the credit card processor.

13 Q. And did JRI have such a merchant account?

14 A. Yes, it did.

15 Q. And given what you just explained, that
16 it's an account used to receive credit card
17 payments, what happened to the money that's
18 deposited into that account?

19 A. It gets transferred into the company's
20 operating account.

21 Q. JRI's operating account?

22 A. Yes.

23 Q. And that would get accounted for in
24 whatever the net worth of the company is?

25 A. Yes.

1 Q. So when Mr. Echols spoke about this
2 merchant account, it's not an extra account with
3 extra money out there; right?

4 A. No, it's not.

5 MR. HUGHES: Objection, Your Honor. That's a
6 leading question.

7 THE COURT: Overruled.

8 Q. BY MS. DO: Currently do you know whether
9 or not the company is operating at a net profit or a
10 net loss?

11 A. It is operating at a net loss.

12 Q. Specifically in 2007, was it operating at
13 a net loss?

14 A. Yes, it was.

15 Q. Do you recall the net loss figure?

16 A. Off the top of my head?

17 Q. Let me refer you to your declaration if
18 you have that in front of you.

19 A. 2007 it was 1.6 million. I'm sorry.
20 3.4 million was 2007's net loss.

21 Q. Okay. Specifically, 3,394,000 and change;
22 correct?

23 A. Yes.

24 Q. So close to 3.5 million?

25 A. Correct.

1 Q. What was the net profit or net loss of
2 2008 for JRI?

3 A. The net profit for 2008 was 1,625,215.

4 Q. What about 2009? Do you have an estimated
5 net income for the company?

6 A. The estimated net loss for the company in
7 '09 is 1,506,494.

8 Q. Other than your testimony and your
9 declaration, you have submitted to this court
10 financial documentation of those three years;
11 correct?

12 A. Yes.

13 Q. And, to your knowledge, were the tax
14 returns for these corporations also submitted as
15 proof of that to the Court?

16 A. Yes, they were.

17 Q. You are aware that Mr. Ray also held a
18 number of accounts with Morgan Stanley, Smith
19 Barney?

20 A. Yes.

21 Q. To your knowledge, has Mr. Ray provided
22 full disclosure of those accounts to the state?

23 A. Yes, he has.

24 Q. And, in fact, to your knowledge, do you
25 know whether or not Mr. Ray has provided monthly

1 statements of every single one of those accounts
2 from all of 2008 to the present?

3 A. I believe so.

4 Q. And do you know who requested that time
5 period?

6 A. It would have been yourself.

7 Q. Do you know where I would have gotten that
8 request?

9 A. From the state.

10 Q. Well, let me ask you. Did it appear there
11 was a suggestion yesterday that Mr. Ray selected
12 what documents he wanted to turn over to the people
13 and what documents that he didn't want to turn over
14 to the people?

15 A. It did seem to be that way. Yes.

16 MS. DO: May I approach, Your Honor?

17 THE COURT: Yes.

18 MS. DO: I give you what's been marked -- I
19 think it is Defense Exhibit 4, the Fourth
20 Declaration of Mr. Li. I have a page that's tabbed
21 there. Do you see it?

22 A. Yes, I do.

23 Q. Does that appear to you to be an email
24 from Mr. Bill Hughes, the prosecutor in this case?

25 A. Yes, it is.

1 Q. To Mr. Luis Li, who represents Mr. Ray?

2 A. Yes.

3 Q. And is that an email wherein Mr. Hughes
4 has requested for certain financial records?

5 A. Yes, it is.

6 Q. And did Mr. Hughes in that email ask for
7 the personal and corporate bank account statements
8 of Mr. Ray from October 8, 2008, to the present?

9 A. Yes.

10 Q. And based upon his specific request, did I
11 ask you for those documents to turn over?

12 A. Yes, you did.

13 Q. Do you know what the current balance is in
14 those accounts, the Smith Barney accounts?

15 A. Yes, I do.

16 Q. Could you tell us, please.

17 A. The majority of them the balance is zero
18 in almost all of them.

19 Q. Is there any account that has a balance
20 remaining?

21 A. There is a -- one account that has a \$.07
22 balance, another one that has a \$.07 balance, one
23 that has \$508,000 balance, one that has a \$98
24 balance. That's it.

25 Q. So with the exception of the account where

1 there is a \$508,000, the rest of them have been
2 drawn down to zero; correct?

3 A. That's correct.

4 Q. And based upon your management of
5 Mr. Ray's book, do you know why he drew down the
6 accounts to zero with the exception to the one that
7 has 508,000 in it?

8 A. There is another one that has a \$53,000
9 balance.

10 Q. Let me ask you with respect to that
11 balance. Is that an IRA account?

12 A. Yes, it is.

13 Q. I'm going to ask you for this purpose to
14 separate out the IRAs. Okay?

15 A. Okay.

16 Q. With the exception of the investment
17 account that has a balance of 508,000, do you know
18 why Mr. Ray drew down the balances to a zero?

19 A. My understanding was that anticipating
20 large legal expenses for this case, the need to
21 gather together all his resources.

22 Q. And does that indicate to you that he
23 intends to fight the charges?

24 MR. HUGHES: Objection, Your Honor.

25 THE COURT: Sustained.

1 Q. BY MS. DO: So when he drew down the
2 balances of these accounts to zero to gather his
3 funds to defend against these charges, did you see
4 any indication there that he was gathering the funds
5 for any other purpose?

6 A. No.

7 Q. And, again, based upon the disclosure
8 that's been given, did Mr. Ray provide evidence to
9 the state of what he was doing in each and every one
10 of these accounts?

11 A. Yes, he did.

12 Q. Let me ask you to talk a little bit now
13 about Mr. James Ray's financials, personal
14 finances. Okay? You manage his personal books;
15 correct?

16 A. Yes.

17 Q. You've seen his tax returns from 2006
18 through 2008?

19 A. Yes, I have.

20 Q. The 2009 taxes have not yet been prepared;
21 correct?

22 A. Correct.

23 Q. You've also seen his W-2s for 2006?

24 A. Yes.

25 Q. Through 2009?

1 A. Uh-huh.

2 Q. Based upon your review of those records
3 and your knowledge of Mr. Ray's books, did he from
4 2006 to 2009 gross \$7.8 million?

5 A. Yes, he did.

6 Q. From 2006 to 2008 did Mr. Ray pay over
7 \$2.4 million in federal income taxes?

8 A. Yes, he did.

9 Q. Did he also have approximately 63,000
10 withheld for 2009 federal income taxes?

11 A. Yes, he did.

12 Q. From 2006 to 2008 did Mr. Ray pay over
13 664,000 in California income taxes?

14 MR. HUGHES: Object to the leading form of
15 these questions, Your Honor.

16 THE COURT: Sustained.

17 Q. BY MS. DO: To your knowledge, what did
18 Mr. Ray pay in California taxes for 2006 to 2009?
19 I'm sorry. 2008.

20 A. The number is not off the top of my head.
21 But whatever it was, it was paid.

22 Q. All right. Does 664,000 sound correct or
23 incorrect to you?

24 A. Correct.

25 Q. To your knowledge, was an additional

1 19,000 withheld for state income tax for the year
2 2009?

3 MR. HUGHES: Object to the leading form of the
4 question.

5 THE COURT: Overruled.

6 Q. BY MS. DO: Is that correct?

7 A. That's correct.

8 Q. And, again, all of these figures that
9 you're testifying to, you've put that in your
10 declaration; correct?

11 A. Yes.

12 Q. To your knowledge, Mr. Hughes has that?

13 A. He has.

14 Q. And he's got the back-up documentation;
15 correct?

16 MR. HUGHES: Objection. Calls for
17 speculation.

18 THE COURT: Sustained.

19 Q. BY MS. DO: Were these documentation
20 attached to your exhibit?

21 A. Yes.

22 Q. I'm sorry. To your declaration?

23 A. Yes, they were.

24 Q. And were these exhibits and your
25 declaration filed with the Court?

1 A. As far as I understand, yes.

2 Q. All right. From 2006 to 2009 do you know
3 whether or not Mr. Ray paid an additional 144,000 in
4 Social Security, SDI and Medicare?

5 A. Yes.

6 Q. So if you do the math, Mr. Smyth, after
7 all the taxes, Mr. Ray's net earnings of over four
8 years was reduced to something in the neighborhood
9 of 4.5 million; is that correct?

10 A. That's correct.

11 Q. With that amount from 2006 to 2009, do you
12 know how much Mr. Ray used to spend on the down
13 payments of the properties we've spoken about?

14 A. Something in the range of 2 million.

15 Q. And with the exception of the
16 Beverly Hills home, those properties will or have
17 gone into foreclosure; correct?

18 A. That's correct.

19 Q. And, to your knowledge, is he going to
20 recoup any of the money that he put in?

21 A. No.

22 Q. It's a loss; correct?

23 A. I believe it will be.

24 Q. Are you familiar with whether or not
25 Mr. Ray made what's called a "margin call" on a line

1 of credit?

2 A. Yes.

3 Q. Are you familiar with the line of credit?

4 A. Yes.

5 Q. And which account is that?

6 A. That's a Smith Barney express line of
7 credit.

8 Q. Would you please explain briefly to the
9 Court what the function or the purpose of this line
10 of credit was.

11 A. That was to sometimes loan money to JRI
12 when it was needed. And I believe it was also used
13 for -- to loan money to Quantum Shift.

14 Q. And how is that line of credit backed up?

15 A. By one of Mr. Ray's investment accounts.

16 Q. In October of 2009, do you know whether or
17 not there was a balance on that line of credit?

18 A. Yes, there was.

19 Q. What was the balance?

20 A. A little over 1 million.

21 Q. And at some point did you learn whether or
22 not that \$1 million was paid?

23 A. Yes.

24 Q. Who paid that?

25 A. Mr. Ray did.

1 Q. So that would have reduced his net
2 earnings by another million; correct?

3 A. Correct.

4 Q. So if I do my math correctly -- and please
5 correct me if I'm wrong -- we're down to
6 1.46 million; right?

7 A. Yes.

8 Q. And you've heard Mr. Hughes produce
9 testimony yesterday that there is about a million in
10 legal fees; correct?

11 A. That's correct.

12 Q. And, to your knowledge, you don't know
13 whether or not --

14 MR. HUGHES: Objection, Your Honor. Question
15 misstates the testimony.

16 THE COURT: I recall a significant figure.
17 Overruled.

18 Q. BY MS. DO: And, to your knowledge, you
19 don't know whether or not that's actually expenses
20 incurred or it's held in reserve for a future trial;
21 correct?

22 A. I don't know.

23 Q. So that would reduce his earnings of over
24 four years down to \$460,000; correct?

25 A. That's correct.

1 Q. And that \$460,000 would consist of the two
2 IRA accounts that remain; correct?

3 A. Yes.

4 Q. And some in that investment account that
5 you spoke of; correct?

6 A. Yes.

7 Q. The one that has a balance?

8 A. Correct.

9 Q. We know that Mr. Echols testified about
10 this Beverly Hills property. And his conclusion was
11 that there was a \$1.5 million equity -- 1.5 million
12 of equity in that house. Do you remember that?

13 A. The figure I don't recall exactly, but he
14 did say there was equity. Yes.

15 Q. All right. Do you know whether or not a
16 surety company would value that home, that equity,
17 the same as Mr. Echols might?

18 A. I have no idea.

19 Q. Would you offer an opinion if you didn't
20 know?

21 A. No.

22 Q. Now, let me ask you. I'm almost done
23 here. You'd known Mr. Ray in the capacity of being
24 his financial controller since February of 2008?

25 A. That's correct.

1 Q. Have you known him prior to that date of
2 becoming his financial controller?

3 A. Yes. I met Mr. Ray in May '07.

4 Q. And in that time, in addition to knowing
5 him professionally, have you come to learn about him
6 personally?

7 A. Yes.

8 Q. And do you feel that you've had sufficient
9 interaction and experiences with Mr. Ray that you
10 might offer this court an opinion as to his
11 character?

12 A. Yes.

13 MR. HUGHES: Objection. Relevance.

14 THE COURT: Overruled.

15 Q. BY MS. DO: Is that yes?

16 A. Yes.

17 Q. And what do you think about Mr. Ray's
18 character?

19 A. What I see is given the nature of the
20 industry that he's in, which is about education,
21 helping people realize their potential, become
22 better, he lives up to what he teaches. He's always
23 held leading by example as one of the actual values
24 of his company. And he's always tried to live that
25 himself. That's what I see.

1 Q. Have you seen him -- can you cite any
2 specific example in which Mr. Ray has demonstrated
3 those values to you personally?

4 A. Yeah. One time my son was on a leadership
5 training academy. He went to Africa for a service
6 project. He was asked to come to the company to
7 give a testimony about his experience, which was an
8 inspiration to everyone. Mr. Ray was so impressed
9 by that, he asked if he could contribute to that
10 leadership academy and support their work.

11 Q. And did he make a donation?

12 A. He did.

13 Q. From what you know, is Mr. Ray a violent
14 man?

15 A. No.

16 Q. Do you understand that you've been asked
17 to testify here in regards to his motion to reduce a
18 \$5 million bond?

19 A. Yes.

20 Q. And you understand that one of the factors
21 that this court must consider is whether he's a
22 flight risk?

23 A. Yes.

24 Q. Do you have an opinion of whether or not
25 Mr. Ray is a flight risk?

1 A. Yes, I do.

2 Q. What is that?

3 MR. HUGHES: Objection, Your Honor. It's not
4 relevant and it's speculation.

5 THE COURT: Again, the rules of evidence don't
6 apply strictly in these proceedings. So overruled.

7 You may answer that.

8 MS. DO: Thank you, Your Honor.

9 THE WITNESS: My opinion that he's not a flight
10 risk is simply that being a man of wanting to lead
11 by example, being that his very business is showing
12 people a good example of how to be people of
13 integrity. There would be no reason for him to
14 behave that way.

15 Q. BY MS. DO: And given your experience with
16 him, managing his books professionally, would you
17 say he's a responsible or not responsible man?

18 A. Responsible.

19 Q. DO: Thank you.

20 I have nothing further, Your Honor.

21 THE COURT: Mr. Hughes, cross-examination?

22 MR. HUGHES: Thank you.

23 CROSS-EXAMINATION

24 BY MR. HUGHES:

25 Q. Sir, can you tell us. Are you a certified

1 public accountant?

2 A. No, I'm not.

3 Q. What is a certified public accountant?

4 A. It is someone who has passed the state's
5 exam for -- to become a licensed certified public
6 accountant.

7 Q. Do you have any licensures or
8 certifications in your field?

9 A. I have a -- an accounting certificate from
10 the London School of Business in Montreal, Canada.
11 I'm a QuickBooks certified advisor, which is the
12 accounting software JRI uses.

13 Q. Okay. Now, this accounting certificate.
14 Was that the school that you studied at?

15 A. Yes.

16 Q. Do you have a bachelor's degree?

17 A. I do not. It's currently in progress at
18 the University of Phoenix.

19 Q. You're working on that right now?

20 A. That's correct.

21 Q. And are you a certified fraud examiner?

22 A. I am not.

23 Q. Do you know what a certified fraud
24 examiner is?

25 A. I've never heard of one before yesterday.

1 Q. Would you, then, not be in a position to
2 comment on whether a certified fraud examiner can
3 look to other documents to determine equity value in
4 real estate?

5 A. Can you repeat that question.

6 Q. Are you in a position to comment on
7 whether a certified fraud examiner can look to
8 documents other than an appraisal to determine an
9 equity value in real estate?

10 A. Not as a certified fraud examiner.

11 Q. Are you in a position as a certified
12 public accountant to offer an opinion as to whether
13 a certified public accountant can reach an opinion
14 based upon records other than an appraisal as to the
15 asset value or equity value of a piece of real
16 property?

17 A. You're asking if I'm a certified public
18 accountant and can give that?

19 Q. Can you -- are you qualified to comment on
20 the practices of a certified public accountant in
21 reaching that determination?

22 A. From my understanding, a certified public
23 accountant doesn't --

24 Q. Sir, my question is a yes or no question.
25 Are you qualified to comment on whether a certified

1 public accountant can look to documents other than
2 an appraisal in reaching a determination of equity
3 in real estate?

4 A. No. Let me rephrase that. From my
5 experience working with certified public
6 accountants, the ones I have worked with, it seems
7 that they are not certified in real estate. That's
8 all I know.

9 Q. But you don't know what a certified public
10 accountant necessarily does in a case such as this,
11 would you, since you're not one yourself?

12 A. Correct.

13 Q. Now, Ms. Do showed you the Fourth
14 Declaration of Luis Li; is that correct?

15 A. Yes.

16 Q. And I believe she showed you an Exhibit C,
17 which was an email from me to her and her
18 colleague. Do you recall seeing that email?

19 A. Yes.

20 Q. Do you see in the first line or the first
21 paragraph it says, "Before I can agree to recommend
22 the lesser bond amount, I need full disclosure of
23 the personal and corporate financial documents we
24 disclosed"? Do you see that?

25 A. Yes. I see that.

1 Q. Do you see it goes on to say that I would
2 like to review copies of all of Mr. Ray's personal
3 and corporate bank account statements from October
4 of '08 to the present?

5 A. Yes. I see that.

6 Q. Have you provided copies of all of
7 Mr. Ray's personal and corporate bank account
8 records to Ms. Do and Mr. Li?

9 A. I have provided everything that Ms. Do
10 asked me to provide.

11 Q. Did you provide the JRI merchant account
12 bank account records?

13 A. Yes, I did.

14 Q. Do you know whether those were submitted
15 by Ms. Do and Mr. Li to the Court in the various
16 filings that have been filed?

17 A. I haven't seen them referenced anywhere as
18 of yet.

19 Q. I believe you testified that you believed
20 everything had been provided to the state. Is that
21 correct?

22 A. Yes.

23 Q. And do you have any basis to base your
24 belief that the Wells Fargo merchant account records
25 were provided to the state?

1 A. One more time.

2 Q. Do you have anything to base your opinion
3 on that the Wells Fargo merchant account records
4 were provided to the state?

5 A. No.

6 Q. Would you like to take some time to go
7 through the records over there in front of you to
8 determine if those merchant account records are
9 included?

10 A. It might take quite a while.

11 Q. Let me ask you this: Have you provided
12 the White Wolf bank account records to Ms. Do and
13 Mr. Li?

14 A. Yes.

15 Q. Do you have any personal knowledge as to
16 whether the White Wolf bank account records from
17 2008 to the present were filed with the Court?

18 A. Yes, I do.

19 Q. You believe they were?

20 A. Yes.

21 Q. Okay. Where are they?

22 A. They are -- I need a little help. I've
23 seen them in here.

24 MS. DO: Your Honor, there are additional
25 exhibits that are not in front of the witness.

1 MR. HUGHES: Your Honor, may I approach the
2 witness?

3 THE COURT: Yes.

4 Q. BY MR. HUGHES: Sir, I'm going to show you
5 what's been admitted as Exhibit 4, which are
6 additional bank account records and other
7 documents. Please find the White Wolf bank account
8 records.

9 A. Yes. Here they are.

10 Q. And what -- we talked about the White Wolf
11 account or Ms. Do asked you about the White Wolf
12 accounts as far as determining asset value. How
13 would you determine Mr. Ray's asset value or the
14 value of White Wolf?

15 A. Can you repeat that.

16 Q. White Wolf receives the profits from
17 certain pieces of intellectual property; is that
18 correct?

19 A. Yes.

20 Q. Since October 1st of 2009, has White Wolf
21 received any profits from intellectual property?

22 A. No, it has not.

23 Q. None whatsoever?

24 A. Not to my knowledge.

25 Q. And what do you base that knowledge on?

1 A. Any such receipts would have come in the
2 mail to my office, and I would have recorded them.
3 And I don't recall receiving any such mail since
4 then.

5 Q. Now, these records here, these bank
6 accounts records -- these are White Wolf
7 International defined benefit pension plan?

8 A. Yes.

9 Q. That's a pension; correct?

10 A. That's what it says.

11 Q. A retirement sort of account? White Wolf,
12 would you agree with me, would have had an operating
13 account?

14 A. That was the only account it had.

15 Q. White Wolf had only a pension account?

16 A. Yes. It was treated as a bank account on
17 its balance sheet.

18 Q. Is it your testimony, then, that as
19 profits came in for the intellectual property, those
20 profits were deposited solely into the defined
21 benefit pension plan?

22 A. Correct.

23 Q. So there is no White Wolf operating
24 account?

25 A. That's right.

1 Q. Sir, would you go through the remainder of
2 that exhibit and find the James Ray International
3 merchant account records.

4 MS. DO: Your Honor, to save time, we'll
5 stipulate that it does not contain the merchant
6 account statements.

7 THE COURT: Does not contain that?

8 MS. DO: Yes.

9 THE COURT: Mr. Hughes?

10 MR. HUGHES: I'll accept that stipulation.

11 Q. Let's talk about Quantum Shift. Are you
12 the bookkeeper for Quantum Shift also?

13 A. Yes, I am.

14 Q. And is it your testimony, then, that
15 Quantum Shift has one principal asset?

16 A. That's correct.

17 Q. And that would be the home in
18 Beverly Hills?

19 A. The home in Beverly Hills. And it also
20 has an asset which is a receivable from James Ray
21 International, about \$300,000.

22 Q. And does that receivable account, for want
23 of a better word, rent or lease money for use of
24 that property?

25 A. No. That account is for improvements and

1 modifications that Quantum Shift paid for that JRI
2 owes Quantum Shift for as a tenant.

3 Q. And Quantum Shift is solely owned by
4 Mr. Ray?

5 A. Yes.

6 Q. And James Ray International is solely
7 owned by Mr. Ray?

8 A. Yes.

9 Q. So one pocket owes the other pocket
10 300,000 receivable?

11 A. One company owes the other company that
12 money.

13 Q. Are you aware of any claims or debits that
14 Quantum Shift has against its property?

15 A. Against the property?

16 Q. If you were to determine the value, if you
17 would, a share value of Quantum Shift, you would
18 look at the value of property or accounts receivable
19 and you'd look at what it owes, for example, on the
20 mortgage on the Beverly Hills property?

21 A. Yes. It has a significant mortgage.

22 Q. Is it correct, I believe you testified,
23 that the Beverly Hills property was purchased a
24 little less than a year ago for 4 million with
25 3 million of that being borrowed?

1 A. Yes.

2 Q. Is the mortgage amount, then, in the
3 ballpark of 3 million?

4 A. No. 1 million of that was borrowed from
5 Mr. Ray, and the balance of the mortgage was
6 borrowed from the lender.

7 Q. So what was the balance of the mortgage?

8 A. It was 2 million and something.

9 Q. So the Beverly Hills property then --
10 there was a million dollars deposit put down;
11 correct? And where did that money come from?

12 A. I believe that came from Mr. Ray's
13 personal investments accounts and possibly from the
14 Smith Barney line of credit.

15 Q. And then Mr. Ray kicked in another
16 1 million toward the \$4 million purchase; correct?

17 A. That is the 1 million we're talking about.

18 Q. So the total mortgage amount is what?

19 A. The mortgage amount is less than
20 3 million.

21 Q. How much less?

22 A. I'd have to look to get the number.

23 Q. Was that provided in the documents?

24 A. Yes, it is.

25 Q. Okay. Could you look and tell us?

1 A. Sure.

2 MR. LI: Your Honor, if we can speed it up,
3 it's on page 4 of the witness's declaration, sub G.

4 THE COURT: Thank you.

5 THE WITNESS: It is 2,949,798.

6 Q. BY MR. HUGHES: So you would agree with
7 me, then, that in determining a share value, if you
8 will, or Mr. Ray's ownership of Quantum Shift, if
9 one were to put that on a net worth statement, one
10 would take the value of the property that Quantum
11 Shift has and you would deduct from that the amount
12 of money that Quantum Shift owes on the mortgage?

13 A. Correct. Plus the amount of money that
14 Quantum Shift owes, whoever lent the extra 1 million
15 to, which happens to be Mr. Ray.

16 Q. Which would be Mr. Ray. One pocket owing
17 another pocket.

18 A. He is an individual who lent that entity a
19 million dollars.

20 Q. Would you agree with Mr. Echols that when
21 determining a net worth statement, it's appropriate
22 to give a value, a share value, for ownership
23 interest in corporate assets?

24 A. Yes. Not corporate assets but corporate
25 stock.

1 Q. The stock of a corporation?

2 A. Yes.

3 Q. And you would agree -- did you agree with
4 Mr. Echols that the corporation has debts or
5 liabilities that exceed the assets, the share value
6 would be zero?

7 A. That's correct. There is -- a share value
8 technically means value of capital document, which
9 is zero. There is no share value for the company.

10 Q. At that point there is nothing there;
11 correct?

12 A. If you're talking about the net worth of
13 the company.

14 Q. I'm not talking about the net worth. I'm
15 talking about the value of that company's shares.

16 A. It has no shares.

17 Q. The company has -- there is an ownership
18 interest in the company; correct?

19 A. Yes.

20 Q. And an individual who owns the company is
21 not liable for the company's debt; correct?

22 A. Correct.

23 Q. That's why people form LLCs and
24 corporations?

25 A. Correct.

1 Q. And, therefore, if the company's
2 liabilities at some point exceed the property owned
3 by that company, the person's interest, if you're
4 determining their net worth, would be zero in that
5 company; correct?

6 A. Yes.

7 Q. You would agree with Mr. Echols's
8 conclusion on that point?

9 A. I don't recall him making that conclusion.

10 Q. Now, you talked about that approximately a
11 million dollars has been put into attorney trust
12 accounts; correct?

13 A. I don't --

14 Q. You don't remember Ms. Do asking you about
15 that?

16 A. That a million dollars was put into
17 attorney trust accounts? I don't recall that
18 question.

19 Q. Okay. Well, let me ask you this: You're
20 familiar with Mr. Ray's finances; correct?

21 A. His personal finances? To a certain
22 extent, yes.

23 Q. And you heard testimony from Mr. Echols
24 yesterday; correct?

25 A. I did.

1 Q. Would it surprise you that approximately a
2 million dollars of Mr. Ray's money or money
3 belonging to corporations of Mr. Ray have been moved
4 in recent months into law firms?

5 A. It would not surprise me. There were
6 legal bills that were presented that were paid.

7 Q. And have you seen those bills?

8 A. I've seen two of them.

9 Q. Have you seen bills that total a million
10 dollars?

11 A. No.

12 Q. Have you seen bills that total half a
13 million dollars?

14 A. Close to it.

15 Q. Have you seen bills that total half a
16 million dollars?

17 A. No.

18 Q. Would you agree with me that it's not an
19 accepted accounting principal to move money into
20 trust account to thwart creditors?

21 A. To do what?

22 Q. Thwart.

23 A. Thwart creditors? I've not seen that
24 practice before. I have no knowledge of any trust
25 account.

1 Q. And you would agree with me that apart
2 from -- and we won't talk about where at this point
3 dispute money that may have been paid for bills that
4 you've seen. But for money that was paid above and
5 beyond bills that were due and owing, that money is
6 still Mr. Ray's; correct?

7 A. Technically, yes.

8 Q. Do you know what the Beverly Hills
9 property is listed for?

10 A. What it's actually listed for? Just on
11 what I heard yesterday, which is 4,925,000.

12 Q. And you testified that in addition to the
13 \$4 million purchase price, I think you said
14 approximately 300,000 in improvement have been made
15 to that property since it was purchased in March of
16 last year.

17 A. Correct.

18 Q. Let's talk about tax returns. Did you
19 provide Mr. Ray's personal and corporate tax returns
20 to his attorneys?

21 A. Yes, I did.

22 Q. The corporate tax returns -- were they one
23 page long?

24 A. Some of them may have been one or two
25 pages. The -- I would be working with the tax

1 returns for the company from time to time to provide
2 them to a lender, for example, who only required the
3 first four pages. For example, income
4 statement/balance sheet.

5 I would scan in just those documents.
6 Didn't need the rest of it. And that's what I had
7 scanned in. That's what I would have provided to
8 the lawyers.

9 Q. You would agree with me that corporate tax
10 returns can run into the many dozens of pages;
11 correct?

12 A. Yes.

13 Q. So when you said you provided tax returns,
14 you provided portions of tax returns; correct?

15 A. Yes.

16 Q. Not the entire tax returns?

17 A. Correct.

18 Q. What salary did Mr. Ray draw from JRI?

19 A. In which period of time?

20 Q. Let's talk about the time period, the
21 fiscal year from '08 to '09.

22 A. Fiscal year '08 to '09 was approximately
23 \$25,000 a month.

24 Q. In addition to salary did Mr. Ray obtain
25 other benefit from JRI?

1 A. Personally, no. Not to my knowledge.

2 Q. I believe I saw something on a tax return
3 indicating something to do with image.

4 MS. DO: Objection. Relevance, Your Honor.

5 THE COURT: Overruled.

6 THE WITNESS: Mr. Ray -- what do you mean
7 exactly?

8 Q. BY MR. HUGHES: Professional image
9 expenses.

10 A. That's an item on JRI's income statement.

11 Q. What are professional image expenses?

12 A. My understanding based upon what the CPA
13 explains, these are expenses that someone who is a
14 celebrity -- you know -- in the public eye, giving
15 public events, as he does, would require to have a
16 presentable image, clothing, et cetera.

17 Q. Sort of things that could be considered an
18 additional benefit; correct?

19 A. I don't know if it would be called that.

20 Q. Do you have the remainder of those tax
21 returns other than the three or four pages that you
22 said you scanned?

23 A. Yes, I do.

24 Q. Did you bring them with you today?

25 A. I should say I do not have them in my

1 possession. They are in the possession of James
2 Ray's residence and in possession of the CPA, who
3 could produce them anytime.

4 Q. Now, let's talk about the questions you
5 were asked regarding, for example, Exhibit G and
6 Exhibit I to your affidavit. Do you remember being
7 asked about those?

8 A. Yes.

9 Q. You said that you believe those came from
10 a Realtor; correct?

11 A. Based upon that it says at the bottom
12 "Courtesy of Dara Allen, RE."

13 Q. Now, is there anything on those documents
14 to make you think they came from a title company?

15 A. The top says "Fidelity National Title
16 Insurance Company."

17 Q. And would you agree with me that next to
18 the words of "Courtesy of Dara Allen, RE" and
19 "Brandon Miller," to the right of that is a seal of
20 some sort and then the words "Fidelity National
21 Title Insurance Company"?

22 A. Yes.

23 Q. Does it appear to you that perhaps
24 Exhibit G was generated by Fidelity National Title
25 Insurance Company?

1 A. Yes.

2 Q. How about Exhibit H? Does it appear to
3 you that that document likewise was generated by
4 Fidelity National Title Insurance Company?

5 A. Yes.

6 Q. How about Exhibit I? Does it appear to
7 you that that document was generated by Fidelity
8 National Title Insurance Company?

9 A. Yes.

10 Q. And rather than go through all of them for
11 all the properties, would you agree with me that
12 those pages were generated -- that are attached to
13 your affidavit were generated by Fidelity National
14 Title Insurance Company?

15 A. Yes.

16 Q. You testified that you thought the Realtor
17 obtained the value of the property by going to the
18 county assessor; correct?

19 MS. DO: Objection. Misstates the testimony.

20 THE COURT: Overruled.

21 THE WITNESS: I said that on these documents
22 the market -- any information regarding market value
23 is in that assessment and tax information section of
24 the document.

25 Q. BY MR. HUGHES: You don't know from where

1 Fidelity National Title Insurance Company obtained
2 the value of the property; is that correct?

3 A. No.

4 Q. It's a guess on your part?

5 A. Yeah. I have no idea.

6 Q. Now, you indicated that you are involved
7 with not only corporate finances but with Mr. Ray's
8 personal finances; correct?

9 A. To a certain extent.

10 Q. And did I hear you correctly that Mr. Ray
11 also had a certified public accountant assisting
12 him?

13 A. Yes.

14 Q. Do you know who that is?

15 A. That's Mr. Ed Blitz.

16 Q. Is Mr. Blitz here today?

17 A. No, he's not.

18 MR. HUGHES: Your Honor, may I have just a
19 moment?

20 THE COURT: Yes.

21 Q. BY MR. HUGHES: Sir, are you familiar with
22 what happened to the approximately 280,000 that was
23 removed from the Quantum Shift bank account in
24 November of last year?

25 A. To my recollection, it was taken out as a

1 cashier's check and sent by Federal Express to
2 Mr. Ray's address.

3 Q. Do you know who the check was made out to?

4 A. It would have been made out to James Ray.

5 Q. And you would agree with me that
6 Mr. Echols when he testified yesterday --

7 A. Can I correct that? I may have been
8 confusing the question with White Wolf. That one I
9 recollect very clearly. But Quantum Shift -- I
10 can't say I recall exactly where that money went.

11 Q. You said part of your job is to prepare
12 monthly reports for the different companies;
13 correct?

14 A. Correct. But as of roughly the first week
15 of November, I was not doing monthly bookkeeping
16 anymore as a cost saving measure. So the all these
17 entities's records are accurate up until, basically,
18 the end of September. We would have been closing
19 October, in mid November. Just prior to that time I
20 was not doing regular bookkeeping anymore.

21 Q. As the bookkeeper for Quantum Shift, did
22 you ever ask Mr. Ray what happened to the \$280,000
23 that was withdrawn from the corporate account?

24 A. No.

25 Q. You weren't curious about that?

1 A. No. It's his business.

2 Q. Now, you indicated that there are no
3 shares in White Wolf?

4 A. Correct.

5 Q. What sort of corporation is it?

6 A. White Wolf is an S corporation.

7 Q. To create an S corporation, by its very
8 nature mustn't there be a shareholder?

9 A. To my knowledge, there is no capital stock
10 value in the balance sheet, to my recollection.

11 Q. I'm not asking about capital stock value.
12 I'm asking about a shareholder. To your knowledge,
13 by its very nature, must a corporate S corporation
14 have shareholders?

15 A. Yes.

16 Q. And, therefore, that shareholder would
17 have -- in assessing one's net worth would have a
18 value that would be attributed to their shares and
19 corporation?

20 A. It has a shareholder. But a shareholder
21 doesn't necessarily have purchased any actual
22 shares.

23 Q. And you testified that Mr. Ray is the sole
24 owner of White Wolf?

25 A. Correct.

1 Q. Therefore, if there are shares, regardless
2 of whether they're purchased or not, Mr. Ray would
3 be the sole owner of the entirety of the shares of
4 that corporation?

5 A. Yes.

6 Q. And would you agree with me that that
7 would be the same not only for White Wolf but for
8 Quantum Shift?

9 A. Yes.

10 Q. And would you agree with me that that
11 would also be the same for James Ray International?

12 A. Yes.

13 Q. Thank you, Mr. Smyth. You've been patient
14 with me. I appreciate it.

15 I have no other questions.

16 THE COURT: Redirect, Ms. Do?

17 MS. DO: No, Your Honor. Nothing further.

18 THE COURT: May Mr. Smyth be excused as a
19 witness in this proceeding?

20 MS. DO: Yes. Thank you.

21 MR. HUGHES: Yes, Your Honor.

22 THE COURT: Thank you.

23 You are excused as a witness.

24 MS. DO: Thank you.

25 Mr. Ray will call Jeff Wilhelm to the

1 stand, please.

2 THE COURT: Please stand and face the clerk.
3 Raise you're hand to be sworn.

4 JEFF WILHELM,
5 having been first duly sworn upon his oath to tell
6 the truth, the whole truth, and nothing but the
7 truth, testified as follows:

8 THE COURT: Please be seated at the witness
9 stand.

10 Sir, please begin by stating and spelling
11 your full name.

12 THE WITNESS: Yes. My name is Jeff Wilhelm.
13 The last name is spelled W-i-l-h-e-l-m.

14 THE COURT: Thank you.

15 Counsel?

16 MS. DO: Thank you, Your Honor.

17 DIRECT EXAMINATION

18 BY MS. DO:

19 Q. Mr. Wilhelm, are you a certified bail
20 agent?

21 A. Yes, I am.

22 Q. Can you briefly explain what that means.

23 A. It's a certification through the major
24 bail association in the United States of America
25 that requires certain levels of education

1 requirements and testing.

2 Q. And how long have you been in the bail or
3 bond industry?

4 A. Since the year 2002.

5 Q. Do you own your own company?

6 A. Yes, I do.

7 Q. What is the name of that company?

8 A. The name of our company is Otto Bond and
9 Bail. And we also work under the name of John Otto
10 Bail Bond Agency and Speedy Release Bail Bonds.

11 Q. You manage those companies?

12 A. Yes, ma'am.

13 Q. You're the owner?

14 A. One of the owners. Yes.

15 Q. And how long have you had the companies?
16 Specifically let's talk about Otto Bond and Bail.

17 A. Under various names we began that company
18 formally in 2002.

19 Q. All right. And you are also, I
20 understand, a lawyer. Correct?

21 A. Yes, ma'am.

22 Q. You've taken the bar and you are an
23 admitted member to the Arizona State Bar?

24 A. Yes.

25 Q. You were also present here -- well, not

1 here. In another courtroom when Mr. Echols
2 testified yesterday?

3 A. Yes, I was.

4 Q. Have you ever met him?

5 A. No, I have not.

6 Q. Did you think it fair for him to offer an
7 opinion about all bail bond agencies without having
8 met you?

9 MR. HUGHES: Objection.

10 THE COURT: Sustained.

11 Q. BY MS. DO: Now, you were contacted at
12 some point around February 3, 2010, with the
13 possibility of writing the bond in this case, were
14 you not?

15 A. Yes, I was.

16 Q. And was I the one who contacted you?

17 A. Yes, you were.

18 Q. And that was also through the
19 recommendation or referral of Tom Kelly, who is here
20 for Mr. Ray as well?

21 MR. HUGHES: Objection. Leading.

22 THE COURT: Overruled.

23 Q. BY MS. DO: Is that a yes?

24 A. Yes.

25 Q. And in discussions with me and with

1 Mr. Kelly regarding the possibility of you writing
2 the bond in this matter, did you do some preliminary
3 research?

4 A. Yes.

5 Q. First of all, at that time on February 3,
6 2010, did you learn that Mr. Ray had been arrested?

7 A. Yes.

8 Q. Did you understand from any sources what
9 his bond amount had been set by the state to be?

10 A. Yes, I did.

11 Q. What was that?

12 A. \$5 million.

13 Q. Let me ask you first of all, in terms of
14 research you've been in this industry since 2002.
15 Have you written many bonds?

16 A. Yes.

17 Q. For a various individuals of all
18 backgrounds?

19 A. Oh, yes.

20 Q. For various charges?

21 A. Yes.

22 Q. Serious ones? Minor ones?

23 A. Yes. I would say our agency has written
24 probably 3,500 bonds or more over those years.

25 Q. And one of the first things that you would

1 do before you undertake to write a bond is you
2 conduct some preliminary research?

3 A. We do what we call "underwriting of a
4 bond" to determine if it's acceptable for us to
5 issue it.

6 Q. And before you determine whether it's
7 acceptable to issue, would you do any kind of
8 background search of the person for which you'd
9 write the bond?

10 A. Yes.

11 Q. You'd learn something about whether or not
12 they have a prior record?

13 A. Yes. That's one of the things we look at.

14 Q. Whether they have a record of failing to
15 appear in court?

16 A. Yes.

17 Q. All right. You would investigate into the
18 circumstances surrounding their arrest, whether they
19 were a person who self-surrendered or a person who
20 was arrested and extradited; correct?

21 A. That is true.

22 Q. Would you also do any research to
23 determine what the charges are for the bond that you
24 might undertake?

25 A. Yes.

1 Q. Does that factor into your determination
2 of whether or not it's an acceptable risk for you
3 and your surety company?

4 A. Definitely one the factors is the charges
5 as they relate to what the potential sanction is in
6 the case.

7 Q. Okay. So you would consider whether a
8 charge, if it's probation eligible, to be a
9 significant factor; correct?

10 A. Absolutely.

11 Q. And likewise, if the charge carried a
12 mandatory term, for example, 20 years, that would
13 make a difference?

14 A. That is correct.

15 Q. In looking at all these factors -- the
16 person's background, the nature of the charges, the
17 length of, severity of, the exposure and punishment,
18 what are you assessing?

19 A. We are assessing what our risk is in terms
20 of flight, in terms of what the bond's purpose is.
21 And that is to ensure the appearance of the
22 defendant in court.

23 Q. And given all of that, then, when your
24 surety company is going to put up sizable amounts of
25 money, you would assess a person's flight risk to be

1 one of the most salient factors; correct?

2 A. Yes. I think there is two salient
3 factors. But that's definitely one major factor.

4 Q. Would you also in making that
5 determination look at the nature of the alleged
6 facts, or the alleged conducts?

7 A. We do to some extent to get a feel for
8 what the underlying events were, not just what the
9 charges are in terms of how they're stated.

10 Q. Does it matter to you in researching the
11 alleged facts what you as a bail bondsman would
12 reach in terms of your opinion about the weight of
13 the evidence?

14 A. Yes.

15 Q. Did you do that kind of research in this
16 case when I contacted you about possibly writing a
17 bond for Mr. Ray?

18 A. Yes. We've looked into the circumstances
19 of the facts that give rise to the case that we're
20 here about today.

21 Q. So specifically, when you researched into
22 who Mr. Ray is, did you learn whether he had a
23 criminal record?

24 A. Yes, we did.

25 Q. Does he have one?

1 A. No, he does not, as far as we know.

2 Q. Did you learn anything about his
3 background that suggested to you that Mr. Ray has
4 had a history of failing to appear?

5 A. Absolutely not.

6 Q. Did you learn anything about Mr. Ray that
7 suggested to you that he was a danger to the
8 community?

9 MR. HUGHES: Objection, Your Honor. Relevance.

10 THE COURT: Overruled.

11 THE WITNESS: We have no information that he's
12 a danger to the community.

13 Q. BY MS. DO: And that's a relevant factor
14 to you, isn't it?

15 A. I would think that if the defendant was a
16 danger to the community, that would be part of their
17 character and we would take into account.

18 Q. Thank you. Did you learn anything about
19 Mr. Ray's family background, about his family ties?

20 A. We looked into that a little bit. Yes.

21 Q. Was that somewhat of an important factor
22 to you?

23 A. I think family ties are always an
24 important factor in terms of flight risk.

25 Q. Did you learn from your research in

1 Mr. Ray that he's a 51-year-old man, son of a
2 Protestant preacher?

3 A. Yes.

4 Q. Did you learn that his parents reside in
5 Oceanside, California?

6 A. Yes.

7 MR. HUGHES: Object to leading, Your Honor.

8 THE COURT: Sustained.

9 Q. BY MS. DO: Did you learn where his
10 parents live?

11 A. Yes.

12 Q. Where is that?

13 A. They're in Oceanside, California.

14 Q. Did you learn whether or not Mr. Ray had
15 any siblings?

16 A. Yes.

17 Q. How many?

18 A. He has a brother in Missouri.

19 Q. And you've been in contact with both his
20 parents and his brother in Missouri?

21 A. Yes, I have.

22 Q. Did you learn in researching what you
23 needed to know to possibly underwrite the bond in
24 this case the circumstances in which Mr. Ray was
25 arrested?

1 A. Did we learn that?

2 Q. Yes.

3 A. Oh. The actual arrest itself. Yes. We
4 were aware of that.

5 Q. Did you learn whether or not he actually
6 traveled to this state, surrendered himself to the
7 Yavapai County Sheriff's Department, or did they
8 have to come to California to arrest him?

9 A. Our understanding is he was preparing for
10 a self-surrender.

11 Q. Did he, in fact, self-surrender, to your
12 knowledge?

13 A. My understanding through the press
14 accounts is that the county sheriff's office kind of
15 usurped that situation and arrested him before he
16 had the opportunity.

17 Q. But your understanding is that he
18 voluntarily traveled from his home state of
19 California out to Arizona?

20 A. Yes.

21 Q. For the purpose of surrendering himself?

22 A. That is correct.

23 Q. Is that an important factor to you in
24 assessing whether someone is a flight risk to
25 underwrite a bond?

1 A. It tells us quite a bit.

2 Q. Did you also then learn what the charges
3 were in this case?

4 A. Yes.

5 Q. And what did you learn the charges to be?

6 A. Reckless manslaughter.

7 Q. How many counts?

8 A. Three counts.

9 Q. Did you do anything to learn about the
10 nature of the actual alleged facts in this case?

11 A. We read media accounts. We haven't looked
12 at formal allegations.

13 Q. And, as you told us earlier, looking at
14 the actual or the alleged facts is important to you
15 in determining both the flight risk and the strength
16 or the weight of the evidence; correct?

17 A. Yes.

18 Q. What was your opinion, for the purpose of
19 undertaking this bond, about the nature of the
20 alleged facts in this case?

21 MR. HUGHES: Objection, Your Honor. His
22 opinion based on media accounts is speculative and
23 not relevant.

24 THE COURT: Sustained.

25 Q. BY MS. DO: Is that a typical way in which

1 you in your industry might learn about the possible
2 alleged facts?

3 A. Yes. If it's not relevant to how we write
4 a bond, then I don't know how we write a bond.

5 Q. Okay. It's something that you take into
6 consideration in the many, many times you've
7 written -- I'm sorry. I've lost track of the
8 number. How many bonds?

9 A. Over 3,500.

10 Q. So you didn't do anything different in
11 that case that you've done in the past 3,000?

12 A. If anything, we look at it a bit closer
13 when we have information that the bond is going to
14 be extremely large.

15 Q. And that was to make sure that you weren't
16 taking an unnecessary risk; correct?

17 A. That is correct.

18 Q. So given all of those factors that we've
19 just gone through, in order for you to arrive at an
20 opinion about undertaking the bond in this case, did
21 you reach as a bail bondsman an opinion about the
22 nature of the alleged facts?

23 A. Yes.

24 Q. What was that?

25 MR. HUGHES: Your Honor, objection. Again,

1 he's testified it's based upon media accounts. It's
2 speculative and it's not relevant.

3 MS. DO: I'd ask it goes to the weight, Your
4 Honor.

5 THE COURT: And it does. Again, the rules of
6 evidence don't apply strictly in these proceedings.
7 I will assess it the appropriate weight. Overruled.

8 You may answer that.

9 MS. DO: Thank you.

10 THE WITNESS: The question goes to whether or
11 not we are willing to write a bond or we believe
12 other sureties are willing to write a bond based
13 upon the information that I'm willing to provide to
14 our surety company.

15 So we've looked into these things. We
16 have formulated opinion as to Mr. Ray. And based on
17 a number of factors including the underlying -- what
18 we believe to be the facts of the case, but the
19 nature of it, we don't believe that Mr. Ray is a
20 flight risk because this is certainly the type of
21 case that a defendant would certainly want to
22 contest and fight.

23 Q. Why?

24 A. Well, it's certainly in this circumstance
25 when we look at it, it's not a calculated crime.

1 It's not something that Mr. Ray was thinking about
2 can I get away with this and do, but gosh. I've
3 been caught.

4 At best, in our view, we're seeing
5 something in the nature of a mistake. And, of
6 course, the state can raise the level of how bad or
7 egregious was the mistake.

8 But those are things that you look at and
9 especially with a defendant that's a public figure
10 and one whose business requires positive reputation,
11 that we don't see any reason that he's not going to
12 want to have his good name restored by fighting this
13 case.

14 THE COURT: Excuse me, Ms. Do. We have to take
15 an afternoon recess at this point. Thank you. We
16 will take the recess. And I want to resume at
17 3:30.

18 Thank you.

19 (Recess.)

20 THE COURT: We're back on the record with the
21 defendant and counsel present. The witness,
22 Mr. Wilhelm, is resuming the stand.

23 Sir, you're still under oath, of course.

24 THE WITNESS: Yes, sir. Thank you.

25 THE COURT: Ms. Do?

1 MS. DO: Thank you, Your Honor.

2 Q. All right. Mr. Wilhelm, before we took
3 the break I was having you describe for us the
4 process in which you and your surety company would
5 assess whether a particular accused would be someone
6 you'd underwrite a bond for; correct?

7 A. Yes.

8 Q. We ran through a number of factors that
9 you would assess. And the last before we took the
10 break, we were discussing the nature of the alleged
11 facts; correct?

12 A. That is right.

13 Q. And I just want to make sure that we all
14 understand why it is that you even look into that
15 and why your opinion might be relevant here. Okay?
16 You indicated that based upon what you learned about
17 the alleged facts in this case, for your purposes it
18 looked like mistakes were made; is that correct?

19 A. That is right.

20 Q. And certainly you're not offering an
21 opinion as to what Mr. Hughes -- the way Mr. Hughes
22 or Ms. Polk would look at it. It's for the purpose
23 of you assessing the risk; correct?

24 A. That's right. It's probably a unique
25 position I'm in versus their position.

1 Q. All right. And so understanding that,
2 your opinion in this case that perhaps mistakes were
3 made but not criminal, I think is what you were
4 saying; is that correct?

5 A. In our view, yes.

6 Q. Okay. So if I'm understanding you
7 correctly, are you saying that this is the type of
8 criminal prosecution in which a defendant like
9 Mr. Ray would not have reason to flee?

10 A. I believe so.

11 Q. It's a type of criminal prosecution that
12 someone like Mr. Ray would have every reason to
13 stand and fight?

14 A. That is our opinion.

15 Q. And that has relevance to you and to the
16 surety company in assessing whether you would
17 undertake, and for the purpose of this hypothetical
18 at the moment, a \$5 million bond; correct?

19 A. Definitely in part.

20 Q. And then the bottom line of it, after you
21 do all this research and this evaluation, you come
22 to a determination as a bail bondsman who then go
23 back to the surety company of whether or not Mr. Ray
24 is a flight risk?

25 A. Yes.

1 Q. Do you have an opinion about whether he is
2 a flight risk?

3 A. We do not believe he's a flight risk.

4 Q. So given that your opinion, after your
5 investigation into who he is, facts of this case and
6 charges, that he is not a flight risk and that 3,000
7 bonds that you've written -- what is your opinion
8 about the necessity of a \$5 million bond to assure
9 his appearance?

10 MR. HUGHES: Objection, Your Honor.

11 THE COURT: Sustained.

12 Q. BY MS. DO: In your experience writing
13 bonds, have you written a bond of that size?

14 A. No.

15 Q. Have you ever heard of a bond that size?

16 A. Not in Yavapai County, Arizona.

17 Q. Do you have an opinion as to what might be
18 reasonable bail to ensure his appearances given what
19 you know about him as a person and what you know
20 about the charges and what you know about the
21 alleged facts?

22 MR. HUGHES: Objection, Your Honor.

23 THE COURT: Sustained.

24 Q. BY MS. DO: When you were asked to
25 possibly undertake the writing of this bond, did you

1 then receive from me a list of proposed collateral?

2 A. Yes.

3 Q. Would you first just take a moment to
4 explain to the Court what you do when you undertake
5 to write a bond. What are you looking at?

6 A. In the state of Arizona it's very critical
7 to secure a bond with some form of collateral. It's
8 largely a financial undertaking on our part because
9 the obligation of a bond is that if there is a
10 failure to appear, the bond will be forfeited and,
11 of course, we will have to pay what the penal sum of
12 the bond is.

13 So securing the bond is extremely
14 important. So we look at what's available that we
15 can secure in advance to recover from in the event
16 that the bond is forfeited. And we always assume
17 that the bond will be forfeited.

18 Q. So do you look at -- if I had proposed to
19 you a list of collateral, you would investigate
20 whether those collateral held any value to you and
21 your surety company to secure the appearance bond;
22 correct?

23 A. We would look at the value, the nature of
24 it, the cost to secure it, all those things.

25 Q. And just so we understand, you did not

1 conduct an independent investigation into what
2 assets are available; correct?

3 A. We do not search out the assets of the
4 defendant, did not do that in this situation.

5 Q. You simply investigated what was submitted
6 to you; correct?

7 A. We look at what's offered to us or
8 proposed to us as collateral for the bond.

9 Q. All right. In this case when you do your
10 investigation, do you assume what the owner's
11 estimated value of the property to be?

12 A. No.

13 Q. Okay. So there could be a disparity
14 between what the owner thinks his property is worth
15 and what your surety company thinks it's worth;
16 correct?

17 A. Absolutely.

18 Q. And in this case you were given a list
19 wherein Mr. Ray offered as collateral his property;
20 correct?

21 A. Yes. One piece of collateral was
22 Mr. Ray's. Yes.

23 Q. And you also received two what I'm going
24 to call -- and I'll have you explain it --
25 indemnitors; right?

1 A. In addition to Mr. Ray, yes.

2 Q. What's an indemnitor?

3 A. That is someone other than the defendant
4 who is obligating themselves to reimburse the surety
5 in the event that the bond is forfeited.

6 Q. Who are the two indemnitors?

7 A. Well, two sets of indemnitors. One are
8 his parents, Joyce and Gordon. And the other is his
9 brother and sister-in-law, John and Cynthia.

10 Q. Let's talk about his parents. That would
11 be Dr. Gordon and Joyce Ray?

12 A. Yes.

13 Q. You had personal conversations with them?

14 A. Yes.

15 Q. You learned a little bit about them?

16 A. Yes.

17 Q. You understood that Dr. Gordon Ray is a
18 Protestant preacher?

19 A. Yes.

20 Q. And they live in Oceanside; is that
21 correct?

22 A. That is right.

23 Q. The proposed list of collateral -- how
24 many different properties were Mr. Ray's parents
25 willing to offer to back this appearance bond?

1 A. They had several. And I'd need to see the
2 list. But it boils down to usable properties, in
3 our view, versus how many they actually have.

4 Q. In order for us to go through this a
5 little smoother, can I ask you to pull out whatever
6 notes you need to look at to refresh your mind?

7 A. Sure.

8 MR. HUGHES: Your Honor, may the record reflect
9 what notes the witness is looking at to refresh his
10 recollection?

11 THE WITNESS: I'm going to be looking at -- I
12 don't know how to describe it. But it's a list of
13 assets that were provided to us of the indemnitors.

14 MR. HUGHES: May we have that marked as an
15 exhibit?

16 THE COURT: Yes. And, of course, you can look
17 at it, Mr. Hughes.

18 MR. HUGHES: Thank you.

19 THE COURT: That's Exhibit 7.

20 MS. DO: Let me provide the state with my
21 copies.

22 Q. What you're looking at now that we've
23 marked as Defendant's Exhibit 7 is a list of
24 proposed collateral assembled by his parents and his
25 brother; correct?

1 A. That is correct.

2 Q. I'd like to focus on what was offered by
3 his parents. Is it true or not true that his
4 parents offered a total of six properties?

5 A. There are six properties. Yes.

6 Q. One of which is the home that they live
7 in; correct?

8 A. That is right.

9 Q. And they gave you what they believe to be
10 the estimated value of their properties; is that
11 correct?

12 A. Yes.

13 Q. What was their belief as to the estimated
14 value?

15 A. According to the document, \$160,000.

16 Q. Is that total for Dr. Gordon and Joyce
17 Ray?

18 A. Total for that particular piece of
19 property -- you mean what's the total of all the
20 properties?

21 Q. Yes.

22 A. The total for all the properties is
23 \$350,000.

24 Q. Did your surety company then evaluate
25 those properties that were offered up by his

1 parents?

2 A. Well, we evaluated -- the surety was
3 willing to consider one of them. The others we
4 evaluated in the sense of looking at what the
5 represented market value was and what the current
6 encumbrances are on it and actually would reject all
7 of them but one based on the fact that the debt
8 relative to the equity is just too high to make it
9 worth using as collateral.

10 Q. My question, thought, however, is his
11 parents were willing to put up six properties;
12 correct?

13 A. Yes.

14 Q. And you had the surety company review
15 whether or not any one of those properties were
16 usable as collateral?

17 A. That is true.

18 Q. And in the end did they accept all six
19 properties?

20 A. No.

21 Q. How many did they accept?

22 A. One.

23 Q. And that would be the one they live in; is
24 that correct?

25 A. Yes.

1 Q. And for that one let me ask you, do you
2 know whether or not an additional property in
3 Oklahoma was accepted by the surety company?

4 A. Yeah. That one is -- it's much more
5 marginal, but it's the last one on the list.

6 Q. All right. But did appear to you that his
7 parents were willing to offer whatever it was that
8 they had to back their son?

9 A. That is correct. Yes.

10 Q. And your surety company went through that
11 and picked out one that they felt and another one
12 that was marginal that could be used?

13 A. Yes.

14 Q. So despite the fact that they may have
15 valued it at 350, your surety company didn't give it
16 that full value, did it?

17 A. No.

18 Q. I'll return to that. John and Cynthia Ray
19 are the second set of indemnitors; correct?

20 A. Yes.

21 Q. And who are they in relation to Mr. Ray,
22 if you know?

23 A. It's Mr. Ray's brother and sister-in-law.

24 Q. They live in Kansas City, Missouri?

25 A. Yes.

1 Q. How many total -- how many properties was
2 his brother willing to back this appearance bond
3 with?

4 A. There is 11 actual pieces of real estate.

5 Q. And may I ask you if the number of
6 properties that an indemnitor is willing to offer
7 up -- does that give you any confidence that the
8 indemnitors are serious about backing this bond?

9 A. I think relative to what their assets are,
10 yes.

11 Q. Okay.

12 A. So it would be a proportion of what they
13 own. It's a substantial portion. Yes.

14 Q. Does that give you any confidence as to
15 whether or not you got a good candidate to
16 underwrite a bond on?

17 A. If we have family indemnitors that are not
18 willing to offer their property or want to put
19 limitations on it, that tells us a lot about their
20 confidence in the defendant.

21 Q. And based upon your actual conversations
22 with his parents, with his brother, and the fact
23 they were willing to put up, to your knowledge, all
24 their properties, what does that tell you about
25 their confidence that Mr. Ray is going to stand and

1 fight?

2 A. They're very confident.

3 Q. With respect to John and Cynthia Ray, of
4 all the properties you submitted did your surety
5 company review them?

6 A. Yes.

7 Q. Was your surety company willing to take
8 all of them?

9 A. No.

10 Q. In addition to those properties, didn't
11 John and Cynthia Ray also offer other items as
12 collateral?

13 A. Yes. Everything that's on this list
14 they've offered.

15 Q. Including their pension fund; correct?

16 A. Yes.

17 Q. They're savings for retirement?

18 A. Yes.

19 Q. What does that tell you about the
20 confidence that his family members have in Mr. Ray
21 standing and fighting?

22 MR. HUGHES: Objection, Your Honor.

23 THE COURT: Overruled.

24 THE WITNESS: Again, they're willing to risk
25 everything they have for getting this bond and

1 getting their son out of custody.

2 Q. BY MS. DO: The estimated value of the
3 property and the collateral submitted by John and
4 Cynthia Ray -- what was that? In their opinion,
5 that is.

6 A. Of the list -- was your question the value
7 of the property or what the equity is in the
8 property?

9 Q. Let me say it better. What did John and
10 Cynthia Ray believe was the estimated value of the
11 collection of collateral they were offering up to
12 you?

13 A. They believed it's -- well, for the real
14 estate \$1,209,900. And then, of course, the IRA
15 accounts, 184,507; jewelry 13,200 and automobiles of
16 32,000.

17 Q. When the surety reviewed those items, did
18 it give full value as Mr. John and Cynthia Ray
19 estimated them to be?

20 A. No.

21 Q. The last collateral you received was the
22 property of Mr. Ray; correct?

23 A. Yes.

24 Q. That's at 11964 Crest Place?

25 A. Yes.

1 Q. And that property -- did you learn what
2 its purchase value was?

3 A. Yes.

4 Q. What was that, sir?

5 A. \$4 million.

6 Q. Did you -- in your investigation of this
7 collateral, did you investigate how much was paid in
8 the down payment toward the purchase?

9 A. Yes.

10 Q. What was that?

11 A. The down payment was approximately
12 \$1 million.

13 Q. Did you learn in your investigation what
14 is owed in principal on the property?

15 A. The balance being \$3 million owed, just
16 shy of 3 million.

17 Q. Did you learn what it is currently listed
18 for? It's on the market; correct?

19 A. Yes.

20 Q. Did you learn what it was currently listed
21 for?

22 A. We did. And I don't recall if it's
23 4.5 million or -- it's under five.

24 Q. Okay. So let's assume that it was listed
25 at 4 1/2 million, it was purchased for 4 million

1 with a million towards it in down payment, 3 million
2 owed in principal. Then that means you must have
3 given Mr. Ray 1 1/2 million in equity in that house;
4 right?

5 A. No, it does not.

6 Q. Why not?

7 A. We as a surety company and as a bail bond
8 agent takes on the same risk as the surety itself.
9 We need to look at what is the realistic recovery
10 value of a property that we take as collateral.

11 So the stated sale price is not
12 necessarily the fair market value, and it's
13 certainly not the value for which the surety company
14 is going to receive upon a foreclosure and a
15 foreclosure sale.

16 Q. In fact, on this particular property, what
17 was the fair market value that your surety company
18 arrived at?

19 A. As a general rule, a surety on a large
20 bond for piece of real estate is going to reduce
21 what they believe as the stated fair market value by
22 20 percent. And that would reduce to \$3.2 million.

23 Q. So we understand that figure, you then
24 started with a fair market value of 4 million for
25 the property, did you not?

1 A. Yes.

2 Q. So you didn't take into account what a
3 Realtor might have listed the property at; correct?

4 A. Well, no. That's not the number that
5 we've used. I mean, it bears perhaps some relevance
6 because they apparently make a determination. But
7 when you do some research as to the fair market
8 value of the property, the systems that we use are
9 going to base those on most recent sales. And since
10 this property was purchased in such a short period
11 of time ago, they use or the result is what the
12 purchase price was at the time.

13 Q. So the fair market value the surety gave
14 this property was 4 million?

15 A. 4 million. Yes.

16 Q. At which the surety company -- and this is
17 assume standard protocol -- just knocked off
18 20 percent?

19 A. Yes.

20 Q. That left you with \$3.2 million?

21 A. Yes.

22 Q. And a principal balance of 3 million;
23 correct?

24 A. Just shy of 3 million.

25 Q. So how much equity is Mr. Ray going to get

1 out of that house in order to get this bond?

2 A. In terms of the surety's valuation of it
3 is 250,000 or so is the amount that we use in terms
4 of putting together the collateral on the bond.

5 Q. Okay. So -- and this is one surety
6 company; correct?

7 A. Actually, we looked at two surety
8 companies.

9 Q. And they both arrived at the same
10 conclusion?

11 A. Actually, one was more generous than the
12 other. One actually rejected the property in total
13 because when you're looking at recoverability, you
14 have to look at the encumbrance. And so for a
15 surety, for us, to foreclose on the property and
16 take it back, we know that we have to pay \$3 million
17 just to get it out of the foreclosure. That's a
18 pretty big undertaking that to then try to obtain
19 whatever equity is left. So one surety said that's
20 just not worth it.

21 Q. Didn't Mr. Ray also offer you his IRA
22 accounts to submit as collateral?

23 A. Yes.

24 Q. And you had already testified that his
25 brother and sister-in-law had also offered their

1 retirement?

2 A. Yes.

3 Q. Did you take that?

4 A. Well, we would want to, but you cannot
5 take a qualified account. There is no way to secure
6 it by law.

7 Q. Okay. So though they were willing to give
8 that to you, you by law couldn't take it; correct?

9 A. Correct. Well, we couldn't secure it.
10 They can say here it is, but at the end of the day
11 we would have no rights in it.

12 Q. All right. So I haven't kept up with the
13 math, but with a house where there is a purported
14 equity of a million, million and a half, whichever
15 number you want to take, the amount of collateral
16 that was given to you is somewhere in the 2 million
17 figure, isn't it?

18 A. Yes.

19 Q. How much did your surety company value
20 that entire collection of collateral to be?

21 A. 600,000.

22 Q. So if your surety company only found
23 600,000 of value in those properties, what kind of
24 bond will that back?

25 A. That would back approximately 600,000.

1 Q. Now, you had indicated previously that the
2 bond that you undertake to provide is to assure the
3 appearance of the accused in court; correct?

4 A. Yes.

5 Q. The 600,000 amount -- is that a reasonable
6 amount to you to ensure the appearance of the
7 accused?

8 A. In this case -- reasonable in what sense?
9 I mean, we think it's more than enough.

10 Q. It's more than enough?

11 A. Yes. Beyond reasonable.

12 MR. HUGHES: Objection, Your Honor.

13 THE COURT: Sustained.

14 Q. BY MS. DO: I'm almost done here, sir. On
15 a bond -- let's say hypothetically it's
16 \$5 million -- the accused has to pony up 10 percent;
17 right?

18 A. That's correct.

19 Q. And that 10 percent is a premium that's
20 paid to you that's never recovered; correct?

21 A. That is correct.

22 Q. And then they've got to back that bond
23 with 5 million or greater in collateral; correct?

24 A. Yes.

25 Q. From that 10 percent premium, how much

1 goes to the surety company?

2 A. The surety company takes 10 percent of the
3 10 percent.

4 Q. So on a \$5 million bond the 10 percent is
5 500 grand; isn't it?

6 A. That's correct.

7 Q. And so 10 percent goes to the surety, that
8 leaves you with 450?

9 A. That's right.

10 Q. You're proposing a much, much lower number
11 than what the \$5 million bond is as what you think
12 as a bond agent is reasonable?

13 A. We've been asked today to tell you what we
14 think is a reasonable amount.

15 Q. And what is that?

16 MR. HUGHES: Objection, Your Honor.

17 THE COURT: Sustained.

18 Q. BY MS. DO: By offering this court under
19 oath your testimony that you think 600,000 is more
20 than enough to assure Mr. Ray's appearance, you're
21 literally throwing money away -- aren't you? --
22 money that would go into your pocket?

23 A. Would we rather have a \$5 million bond?
24 Sure. It would be a wonderful year for us.

25 Q. But that's not what you're saying?

1 A. That's not what we're saying. It's way
2 too much.

3 Q. Thank you very much.

4 Nothing further, Your Honor.

5 THE COURT: Thank you.

6 Mr. Hughes?

7 MR. HUGHES: Thank you.

8 CROSS-EXAMINATION

9 BY MR. HUGHES:

10 Q. Mr. Wilhelm, as a bondsman you're
11 regulated by the Arizona Department of Insurance;
12 correct?

13 A. That is correct.

14 Q. And the department of insurance has
15 certain regulations that govern the writing of bail
16 bonds; correct?

17 A. Yes.

18 Q. Is there a department of insurance
19 regulation that requires you to obtain security for
20 a bail bond?

21 A. There are regulations that talk about the
22 security. It's very unclear as to whether it's a
23 requirement or not.

24 Q. You would agree with me, though, there is
25 no regulation that specifically requires you to

1 obtain the collateral to secure a bail bond?

2 A. That's correct. A bond could be done, in
3 my belief, without any collateral.

4 Q. As long as you, the bondsman, are prepared
5 to come up with the money if the person you bond
6 decides to take a trip to Venezuela?

7 A. Yes.

8 Q. Now, you indicated -- what day were you
9 first contacted by the defense to look into a bond
10 in this case?

11 A. February 3.

12 Q. February 3rd. If you testified that it
13 was the 23rd, is that incorrect?

14 A. If I testified that we were contacted on
15 the 23rd --

16 Q. Which would have been yesterday.

17 A. No. The 3rd. I'm sorry. Yeah.

18 Q. And you mentioned that you made your
19 assessment of property that was available to post a
20 bond in this case based upon information that was
21 provided to you by Mr. Ray or his attorneys or his
22 family; correct?

23 A. In terms of the collateral? Yes.

24 Q. You didn't go out and look to see if
25 Mr. Ray had additional properties that were not

1 listed?

2 A. We did not.

3 Q. Which properties did Mr. Ray inform you
4 about that he was willing to post as collateral in
5 this case?

6 A. Mr. Ray personally?

7 Q. Or his attorneys.

8 A. Do you mean anybody who was willing to put
9 up the collateral?

10 Q. Yes. What property not owned by family
11 members but owned by Mr. Ray's corporation?

12 A. The Beverly Hills property.

13 Q. Did he ever mention a property in Hawaii?

14 A. No.

15 Q. Did he ever mention commercial property in
16 California?

17 A. No.

18 Q. Did he ever mention any other real
19 property in Nevada?

20 A. We took a look preliminarily at a
21 condominium project in Las Vegas, I believe.

22 Q. Is that the Las Vegas City Center?

23 A. Yes.

24 Q. And that's something that's still being
25 built; correct?

1 A. The Realtor that we spoke with seems to
2 believe it's now completed and ready to move
3 forward.

4 Q. But you didn't look at any other real
5 property that exists in Nevada; correct?

6 A. No.

7 Q. And you mentioned you were here yesterday
8 when Mr. Echols testified?

9 A. Yes.

10 Q. Do you recall him mentioning there was
11 other property in Nevada?

12 A. I don't recall.

13 Q. As a bondsman, wouldn't that interest you
14 if there was other property, commercial property, in
15 California or property in Hawaii or property in
16 Nevada or in other states that might be used to
17 satisfy a bond?

18 A. Oh, yes.

19 Q. If a person is unwilling to post those or
20 tell you about those properties, is it possible --
21 what conclusion might you draw from that?

22 A. It depends on their reason or --

23 Q. There may simply not be equity in those
24 properties; is that correct?

25 A. It could be a variety of things.

1 Q. Or they may not want to lose those
2 properties if they leave?

3 A. Fair enough. Yes.

4 Q. You mentioned that sureties would not
5 accept the property that was proposed to be posted
6 in this matter -- certain pieces of property
7 belonging to Mr. Ray's family members; correct?

8 A. Yes. There are properties on that list
9 that we wouldn't accept nor would the surety accept.

10 Q. And who did you speak to at the sureties
11 to run those properties by the surety?

12 A. Which surety are we talking about? We
13 worked with two of them.

14 Q. Well, let's start with the beginning.
15 Which was the first surety you spoke to?

16 A. The First Bankers Insurance.

17 Q. And who did you speak to at First Bankers
18 Insurance?

19 A. The person in charge of large bond
20 underwriting Laura Oaks.

21 Q. Okay. And how do you spell her name?

22 A. Laura is L-a-u-r-a. Oaks, like the tree,
23 plural.

24 Q. And what information did you provide to --
25 what information did you provide to Ms. Oaks?

1 A. We provide information that they can
2 identify the properties so that the surety can then
3 do some research into what they believe fair market
4 value is, what they believe encumbrances are.

5 Q. Do you know whether a certified appraisal
6 was done on any of the properties?

7 A. No. The type of assessment that's done
8 with most sureties, there is a system through --
9 called "Real Quest" that does comparables. Some
10 sureties use a system called "Zillow," which is a
11 little less formal. Again, tries to pull up
12 comparables.

13 Q. Is Zillow something you've used before in
14 determining a rough-and-ready value of property?

15 A. Sure.

16 Q. Did you find it to be fairly accurate?

17 A. We use it by going -- they give you a
18 range of values. And as a surety you generally want
19 to be fairly conservative. And so we look at their
20 value range.

21 We're in a market today that's really
22 quite unstable still. So there was a time when we
23 thought Zillow was overstated. Now we're at a time
24 when we think Zillow is probably understated.

25 Q. Now, you mentioned the things that you

1 look into before you write a bond, including the
2 nature of the alleged conduct; correct?

3 A. Yes.

4 Q. And you said in this case you based that
5 upon newspaper reports?

6 A. Well, what the allegations are generally.
7 Yes. Reading accounts of what happened here, what
8 were the circumstances.

9 Q. And the accounts that you read, so we're
10 clear, were in newspapers; correct?

11 A. Newspapers, internet postings or articles,
12 if you will, those sorts of things.

13 Q. And the internet postings -- are those on
14 news web sites?

15 A. Yes.

16 Q. And is this something that you do in every
17 case before you write a bond?

18 A. Normally our cases don't have the type of
19 notoriety that we would find information through
20 news sources.

21 Q. And you mentioned, for example, that you
22 look at as one factor danger to the community?

23 A. Well, yeah. I mean, that's a factor.

24 Q. Is it correct that your business writes
25 bonds to people who are accused of violent crimes?

1 A. I mean, occasionally. Much less frequent,
2 though.

3 Q. Do you have any idea how many bonds in the
4 last year you've written to people who are accused
5 in the Yavapai County Superior Court of a violent
6 crime?

7 A. No. I have not tracked the nature of
8 allegation or crime relative to number of bonds that
9 we've done. Just in a more general sense, violent
10 crimes are the exception to what our typical bond
11 would be.

12 Q. You would agree with me, though, that you
13 have written bonds for people accused of violent
14 crimes?

15 A. Yes.

16 Q. You mentioned you look at the weight of
17 the evidence; correct?

18 A. We look at the circumstances. I don't
19 want to say that we sit as judgment, so to speak, of
20 all the evidence to determine the case.

21 Q. You would agree with me, would you not,
22 that approximately 95 percent of felony cases in
23 this county, according to most recent county
24 statistics, result in felony conviction?

25 A. Say that again. 95 percent?

1 Q. Approximately 95 percent of felony cases
2 that begin result in a felony conviction?

3 MS. DO: Objection. Assumes fact not in
4 evidence, Your Honor.

5 MR. LI: And not Mr. Kelly's example. He's 24
6 out of 25.

7 THE COURT: Again, overruled. I'm not going to
8 go through the nature of the evidence that's
9 admissible in these proceedings. So overruled.

10 You may answer that.

11 THE WITNESS: I'm not a criminologist. I don't
12 look at the statistics. I really don't know. Would
13 I be surprised? No, I wouldn't.

14 Q. BY MR. HUGHES: Would it not surprise you,
15 then, that the proportion of people who are provided
16 bond by you and your company who wind up with felony
17 convictions are -- probably follow that average?
18 It's probably about 95 percent?

19 A. Possibly. Again, I wouldn't be surprised.

20 Q. It wouldn't surprise you at all?

21 A. Whether there is some form of plea
22 agreement or going to an actual conclusion of a
23 case.

24 Q. And those are -- in those cases the vast
25 majority of the cases that you write bonds,

1 95 percent of which approximately result in felony
2 convictions, have you done a review to determine
3 your opinion as to a person's guilt?

4 A. I'm not sure I'm following the question.

5 Q. You indicated --

6 A. I said I wouldn't be surprised if the
7 percentage is that high. Again, we've not done an
8 assessment of our cases or files to know how that
9 works out. But then your question is?

10 Q. My next question is presumably of those
11 95 percent, you've done a similar review before
12 writing the bond that you would do in any other
13 case; correct?

14 A. Depending on bond amount, depending on
15 nature of collateral. The assessments can be
16 different. For example, the Court provided with
17 100 percent cash to secure a bond, it's really not a
18 lot of consideration on my part in terms of whether
19 I believe the person is going to be convicted or
20 not.

21 Q. Well, let's talk about cash for a minute.
22 You indicated that your company would be willing to
23 write a bond approximately in the range of 600,000
24 based on the information that had been provided to
25 you by Mr. Ray, his attorneys and his family;

1 correct?

2 A. Yes.

3 Q. And in the ballpark of 600,000?

4 A. In the ballpark. Yes.

5 Q. If Mr. Ray or his attorneys were to
6 provide you with, let's say, another half a million
7 dollars in liquid cash or in obligation on their
8 part, if they could show you an account with half a
9 million dollars in liquid cash, would that affect
10 the amount that you would be willing to lend as far
11 as a bond?

12 A. Absolutely.

13 Q. In other words, cash is the best sort of
14 security for you to have?

15 A. That's right. It retains it's value and
16 it's extremely liquid.

17 Q. We talked at the beginning about the
18 Department of Insurance regulations. Other than
19 regulation which caps how much of a fee that you're
20 entitled to get, the 10 percent, we agree that there
21 is no requirement that you obtain any collateral
22 whatsoever from the person that you're writing the
23 bond for; correct?

24 A. Right.

25 Q. And so if you made the determination that

1 Mr. Ray was not a flight risk, your company could
2 write, for example, a million dollar bond and
3 subsume or take on that risk yourself; correct?

4 A. No. Our authority without special
5 authority given, our general authority, is up to
6 \$100,000. So any bond beyond that the surety
7 company is going to have to say yes, you can do it.
8 And you need to get their permission.

9 Q. But if your firm, your bonding company,
10 wanted to put up the collateral?

11 A. You mean the surety itself --

12 Q. I mean your Otto Bond and Bail or the
13 other companies, that Speedy Release company -- if
14 they wanted to put up the collateral, the surety
15 provided the collateral is sufficient, the surety
16 would issue that bond; correct?

17 A. You're losing me a little bit. I think
18 what you're saying is -- I don't know what you're
19 saying. Give it to me again. Sorry.

20 Q. You could post collateral? Your company
21 could post collateral?

22 A. To actually put up our own form of
23 collateral?

24 Q. Yes.

25 A. To some extent we could. Our surety

1 company in terms of willingness to work with us and
2 authority given to us is already in part -- based in
3 our part on our financial wherewithal. So they
4 already know what Jeff Wilhelm has or John Otto
5 has. They've already taken that into account.

6 If we turn to them and say well, here's a
7 house or here's another bank account, yes. You
8 could increase the collateral attributable to that
9 bond. There is going to be some limits there.

10 Q. Well, let's put it this way: Let's say
11 that in addition to the 600,000 that we've talked
12 about that the surety companies have already found,
13 if The Judge were to set, for example, a
14 \$1 1/2 million bond, would there be 900,000 in
15 additional security that you would be looking for;
16 correct?

17 A. That is right.

18 Q. And would you agree with me that the Otto
19 Bond company and the principles of that company have
20 sufficient assets to secure an additional \$900,000?

21 A. You're asking me if financially I have
22 those assets?

23 Q. I am.

24 THE COURT: Do I need to answer that?

25 MS. DO: Objection. Relevance.

1 THE COURT: Sustained.

2 MR. HUGHES: Your Honor, may I explain the
3 relevance?

4 THE COURT: Yes.

5 MR. HUGHES: Mr. Wilhelm has testified that he
6 does not believe Mr. Ray is a flight risk. If he
7 doesn't believe Mr. Ray's a flight risk and he
8 stands on a, for example, \$1 1/2 million bond to
9 make \$150,000, it seems to me that if he believes
10 he'd make that money and there is no risk, if he's
11 capable of putting up that amount of money, that
12 would be a relevant consideration.

13 THE COURT: I think the question can be posed.
14 Go ahead.

15 MS. DO: I think that's argumentative, Your
16 Honor. It's not relevant to assessing the
17 individual accused.

18 THE WITNESS: I can respond why it's not true
19 as well.

20 THE COURT: I think the question can be posed
21 in a general way without asking about specific
22 assets and that type of thing.

23 THE WITNESS: Assume, Mr. Wilhelm, you're worth
24 \$2 million --

25 Q. BY MR. HUGHES: And I'm not asking you how

1 much you're worth. What I'm asking is if you wanted
2 to secure a \$900,000 bond, could you -- could that
3 be done?

4 A. Yes. I guess to answer your question, if
5 the principals of my agency wanted to put up
6 additional assets on behalf of the defendant, can we
7 do that? Yes. To some extent we can.

8 Again, sureties already know generally
9 what we're worth. And so to some extent those
10 assets are already taken into account. But with if
11 we were to offer additional assets of our own, you
12 could stack that on top of the collateral that's
13 already been offered by the defendant and/or family
14 members to increase what the surety is willing to
15 issue. So that would be true.

16 Q. Would you do that in this case to secure a
17 \$1 1/2 million bond?

18 A. Personally? The question is how much
19 would I personally advance?

20 Q. Would you and your company do that in this
21 case?

22 A. On a very limited basis perhaps to help
23 get a bond done. So you understand, the nature of
24 surety and insurance, it's a function of spreading
25 of the risk. And so sureties stay in business

1 because they have a lot of bonds out there, and with
2 the security that they have, their risk is
3 relatively speaking lower with each bond.

4 But if you're saying for some surety to
5 put up a disproportionate part of their own assets
6 unsecured, I don't know that you can do that.

7 Q. I'm not asking a hypothetical. I'm asking
8 in this case, the case of State versus James Arthur
9 Ray, knowing that the surety has found 600,000
10 approximately in collateral and if a bond was set at
11 1 1/2 million, would your company, the Otto Bond
12 company, and yourself put up sufficient security
13 belonging to the Otto Bond company and to yourself
14 to collateralize that remaining \$900,000 for
15 Mr. Ray, who you do not believe is a flight risk?

16 MS. DO: Again objection, Your Honor. It's not
17 relevant.

18 THE COURT: Overruled.

19 Q. BY MR. HUGHES: I'm sorry. What was your
20 answer?

21 A. No. My wife would kill me.

22 Q. Thank you.

23 I don't have any other questions.

24 THE COURT: Thank you.

25 Redirect?

1 MS. DO: Thank you, Your Honor. Just a few.

2 REDIRECT EXAMINATION

3 BY MS. DO:

4 Q. With regard to the other properties that
5 Mr. Hughes has asked you about, would you take a
6 property that is under water as collateral?

7 A. No.

8 Q. Would you take a property that is in
9 foreclosure as collateral?

10 A. No.

11 Q. Would you take a property that's been
12 noticed for foreclosure?

13 A. No.

14 Q. Thank you.

15 Nothing further.

16 THE COURT: May Mr. Wilhelm be excused as a
17 witnesses in these proceedings?

18 MR. HUGHES: Yes, Your Honor.

19 THE COURT: Then thank you, sir. You are
20 excused.

21 Ms. Do?

22 MS. DO: Thank you, Your Honor. At this time
23 Mr. Ray rests.

24 THE COURT: All right.

25 Any rebuttal?

1 MR. HUGHES: Yes, Your Honor. State recalls
2 Mr. Echols.

3 THE COURT: Mr. Echols, please come forward and
4 resume the stand. Of course, you're under oath for
5 all proceedings.

6 THE WITNESS: Yes, sir.

7 RICHARD LEE ECHOLS,
8 having been previously duly sworn upon his oath to
9 tell the truth, the whole truth, and nothing but the
10 truth, testified as follows:

11 MR. HUGHES: Your Honor, may I have just a
12 moment? We're going to set up a flip chart.

13 THE COURT: Yes.

14 REBUTTAL DIRECT EXAMINATION

15 BY MR. HUGHES:

16 Q. Mr. Echols, were you present in the
17 courtroom when Mr. Smyth testified?

18 A. Yes, sir.

19 Q. Can you tell us what the differences are
20 between a certified public accountant and a
21 bookkeeper in terms of training and experience and
22 professional expertise .

23 A. A minimum of bachelor's degree, a minimum
24 of two years of experience in the area of being a
25 certified public accountant, and taking the exam.

1 Q. And who administers the certified
2 public --

3 MR. LI: Your Honor, I'm going to object to
4 this. I think the Court is aware of the difference
5 between a bookkeeper and CPA. There is no jury
6 here.

7 THE COURT: Overruled on this question.

8 MR. HUGHES: I'll be brief in this area. I
9 know we're getting into 4:00.

10 Q. Can you tell us who administers the
11 certified public accountant exam.

12 A. American Institute of Certified Public
13 Accountants.

14 Q. And is that a body that's recognized by
15 certified public accountants in this country as a
16 regulatory body?

17 A. Yes, sir.

18 Q. And can you tell us regarding your
19 specialty certification and as a fraud examiner,
20 does that give you additional qualifications beyond
21 what a CPA has in the area of determining a person's
22 net worth based upon bank accounts, tax statements
23 and other financial documents?

24 A. It covers a whole realm of additional
25 areas. It's an extension of the things that

1 normally a CPA would do. It goes into some
2 additional areas of investigative technique, looking
3 at values of assets, et cetera. And that
4 certification is given as a result of the number of
5 years of experience and also sitting for the CFE
6 exam.

7 Q. And who administers the certified fraud
8 examiner exam?

9 A. The Association of Certified Fraud
10 Examiners.

11 Q. And is that an organization that's
12 recognized by CPA's and fraud examiner as an
13 authoritative regulatory body?

14 A. Yes, sir.

15 Q. Now, turning to Mr. Smyth's testimony
16 earlier this afternoon, did -- is it your
17 understanding that Mr. Smyth testified that you
18 included something called "inventory assets,"
19 "employee benefits" and "fixed assets" in reaching
20 the net worth of Mr. Ray?

21 A. Yes, sir. He did.

22 Q. Did you use any of those things in
23 reaching the net worth?

24 A. No sir, we did not.

25 Q. In fact, did we go over that yesterday in

1 some detail?

2 A. In detail.

3 MR. HUGHES: Your Honor, may the witness
4 approach the chart?

5 THE WITNESS: Yes.

6 Q. BY MR. HUGHES: Mr. Echols, can you write
7 down on the chart the factors that you considered in
8 coming up with Mr. Ray's net worth.

9 A. Yes. We started yesterday with the
10 statement that Mr. Smyth referred to, which was the
11 net worth statement. And on that net worth
12 statement the very first item on there was
13 investments. And it had investment of some \$227,
14 which we said we left on the calculation for the net
15 worth.

16 MR. LI: Objection, Your Honor. This is not
17 rebuttal. It's simply cumulative. And Mr. Smyth
18 didn't supply that particular document.

19 THE COURT: Overruled.

20 THE WITNESS: The second item on there was the
21 retirement accounts. They came to some \$240,000.
22 As you recall, we kind of skipped the 227. We went
23 to the retirement.

24 Q. BY MR. HUGHES: Why did you skip the 227?

25 A. Because it was small enough that it was

1 irrelevant. So with the retirement we put down
2 \$204,000 as a rough estimate of what that value
3 was. The actual value is just a little bit in
4 excess of 240,000.

5 Q. And is that based on a figure provided on
6 this net worth statement provided by the defendant
7 and his attorneys?

8 A. Yes, sir. They gave us documents that
9 those were the correct figures.

10 Q. Okay.

11 A. The third item on that statement was
12 James Ray International, which included the two
13 items that Mr. Smyth referred to, the inventory
14 assets and the fixed assets. And I think it was
15 some comment about there was approximately \$800,000
16 of nonliquid assets that would come off the 2.4 that
17 we had originally talked about.

18 But those assets weren't included at all.

19 Q. And why --

20 A. And the reason they weren't included is
21 because they're assets that belong to the
22 corporation JRI and have no application to Mr. Ray's
23 net worth except to the extent that those assets
24 gave a fair market value to the corporation. And
25 that would then be listed. But we had agreed that

1 JRI, the corporation, was, basically, insolvent and
2 the value was zero. So we did not put a figure on
3 there.

4 Q. Since the share value of JRI is zero, you
5 didn't include those assets that Mr. Smyth talked
6 about in your net worth assessment; correct?

7 A. That's correct. Those two. There was a
8 third one that he talked about, which was down under
9 employee benefits.

10 Q. And I believe he talked about employee
11 benefits as being approximately 923,000. Correct?

12 A. Yeah. The value on the statement is
13 actually an N/A for zero.

14 Q. Did Mr. Smyth look at the wrong line on
15 the net worth statement that was provided to him?

16 A. I think the value was presented by the
17 attorney, and Mr. Smyth confirmed that was the value
18 of the pension. Because she made a comment about
19 deferred. There was no deferred on here. And the
20 923 figure that's on here is only a reflection of
21 two figures below it that were added together. Has
22 nothing to do with employee benefits.

23 Q. And that has something to do with the JRI
24 asset value?

25 A. No. It really has something to do with a

1 deferred pension that's going to be received from
2 AT&T, which was his previous employer.

3 Q. Did you include any of that in assessing
4 Mr. Ray's net worth?

5 A. No, sir, I did not.

6 Q. What else did you include in assessing
7 Mr. Ray's net worth?

8 A. The next item on there was the Institute
9 for Global Harmony. And that institute showed it
10 had 2,800 in the bank. I put that as IGHI, and we
11 just put \$2,000 on there as the value.

12 Q. As with the other figure, you rounded it
13 down?

14 A. That's correct. The next item was White
15 Wolf International. We had a substantial discussion
16 about those assets and the fact that we didn't have
17 any documentation for what was in there. I think
18 Mr. Smyth at the very end of his testimony indicated
19 that there was some money that was in White Wolf
20 that was transferred at the last minute that was
21 given a cashier's check to Mr. Ray. But the
22 information they gave us was that there was no money
23 in that account.

24 Q. Did you then include any White Wolf
25 assets?

1 A. White Wolf I gave a zero.

2 Q. Now, let me ask you. The Institute for
3 Global Harmony you show \$2,000. Is that what you
4 would assess the share value of the corporation as?

5 A. That would be correct. The next item on
6 there was the real estate. And we had a lengthy
7 discussion yesterday about the real estate and where
8 we got the values. And, again, the values that we
9 used, as I explained yesterday, were the values that
10 Mr. Smyth reviewed with us here off of the trust
11 title documents.

12 Q. The Fidelity Trust documents?

13 A. Correct. And I believe I testified
14 yesterday that my staff and I took the values that
15 were on there because they were somewhat different
16 than what were on this fair market -- excuse me --
17 the net worth statement.

18 My staff went into Zillow and confirmed.
19 Zillow has a high and a low. We confirmed that the
20 figures that were on that title statement were
21 within that range that Zillow gave. And once we
22 determined that they were within that range, we went
23 ahead and used the figures that Mr. Smyth gave us as
24 opposed to changing them.

25 Q. And you heard Mr. Wilhelm testify that, in

1 his opinion, Zillow has been conservative in its
2 figures recently?

3 A. That's correct.

4 Q. And is that your experience as well?

5 A. Recently, yes. They've been very close in
6 the past. But with the economy the way it is,
7 they've begun to be very conservative.

8 Q. As a CPA, more particularly as a fraud
9 examiner, is your reliance upon the Fidelity
10 documents and your independent research with Zillow
11 something that's an accepted practice in determining
12 a value of a real property?

13 A. Yes. If, in fact, the two complement each
14 other, then we wouldn't go any further. If, in
15 fact, they seem to be at odds, then we would do
16 additional research. In this particular case the
17 factors were so close that we went ahead and used
18 the figures Mr. Smyth gave us.

19 Q. And so what values were you able to add to
20 the net worth statement?

21 A. I think we came up with 3,432,000. And I
22 think we just used real estate -- we just used 3.4
23 instead of 3.432.

24 Q. Okay.

25 A. And then we took as an offset to this the

1 mortgages, which Mr. Smyth also gave us, that were
2 very, very close to \$3 million. So we subtracted
3 3 million from that figure for the encumbrances on
4 the real estate, which gave us, basically, a
5 .4 million for real estate.

6 Q. And when you speak of real estate, does
7 that include the Beverly Hills property?

8 A. That does not include the Beverly Hills
9 property. No. In addition, we had the corporation
10 of Quantum Shift.

11 Q. Did you determine a share value for
12 Quantum Shift?

13 A. Yes, sir. We did. We took the value of
14 the real estate plus the value of the improvements
15 to that real estate. Because it had only been a
16 six-month-old property, we felt that the value of
17 the original purchase price and the additions to it
18 were close to it's fair market value.

19 We then went to Zillow, and then we went
20 to the actual listing for that property. Since the
21 property was listed at \$2.6 million-- excuse me.
22 \$4.6 million. We reduced the mortgage value of
23 3 million, which would have given us an equity of
24 1.6. We rounded down to 1.5.

25 Q. And you mentioned the property is only a

1 six-month property. What do you mean by that?

2 A. Well, it was purchased in late March.
3 They made improvements through May and June. So the
4 property was really available after that. And
5 through 2009 would be another -- excuse me -- maybe
6 seven, eight months.

7 Now, the only other thing that we needed
8 to add to that was, as you recall, we discovered
9 that Mr. Smyth gave us a bank account that had
10 \$508,000 in it that was not disclosed on this
11 statement.

12 Q. Was that one of the trust accounts?

13 A. That was cash. So we put \$580,000 --
14 excuse me -- \$508,000 on the statement for that
15 particular. If you take the 508 and add the two,
16 that comes to 510, plus 240, comes to 750. Plus
17 this four plus this 1.5. If you add that up, I
18 think it comes to 2.5. We rounded down. You asked
19 me if it was 2.4, and I said yes.

20 Q. And, again, you rounded down in all cases
21 to give the benefit to Mr. Ray?

22 A. That's correct.

23 Q. Did you include in that figure of
24 approximately 2.4 or 2.5 million the \$1 million that
25 has gone to the law firms -- the liquid cash?

1 A. No, sir. Nor did we include -- remember
2 we placed the caveat that we didn't include what we
3 thought was jewelry? We didn't include any antiques
4 or furniture and fixtures for the six or seven
5 properties that are furnished.

6 And then we also didn't include in there
7 some \$400,000 in cash that was all removed from
8 these various accounts on November the 10th that we
9 can't account for. And then the last thing that we
10 said was we also have two months of income coming in
11 to JRI that's unaccounted for.

12 Q. You also didn't include the luxury
13 vehicles like the Range Rover or the Porsche 911?

14 A. That's correct.

15 Q. You heard some testimony by Mr. Smyth that
16 he would not assess a value to the other parcels of
17 real property that you've attributed 400,000 to
18 because they're allegedly in foreclosure. Do you
19 recall that testimony?

20 A. Yes, I do.

21 Q. Do you agree with that testimony?

22 A. No, I don't. Because I think we need to
23 also mention, as I heard the testimony of the bond
24 agent here, they were considering as collateral the
25 property in Las Vegas at the City Center.

1 I assume that since they were considering
2 that, it has equity. And as you will recall, we had
3 a discussion about that. And we purposely left that
4 off of the net worth statement because we were told
5 by the defense that that property had already been
6 turned back over or was worthless.

7 Q. So when you included in your real estate
8 values under R/E, you don't have the Beverly Hills
9 property and you don't have the Las Vegas City
10 Center property?

11 A. That's correct.

12 Q. Now, the remaining properties that were
13 listed on this net worth statement prepared by the
14 defense -- that Balfour property and some of the
15 Hawaii home -- those allegedly are in foreclosure.
16 Would you assign any value to those properties?

17 A. I didn't consider whether they were in
18 foreclosure because at the point that we were given
19 the information, I wasn't sure how many were. We
20 just took the values that Mr. Smyth gave us.

21 Q. Is it correct that even in foreclosure, if
22 there is equity, which these documents suggest there
23 is, above the indebted amount, that equity is an
24 asset of Mr. Ray?

25 A. That's correct.

1 Q. Thank you, Mr. Echols.

2 I don't have any other questions.

3 THE COURT: Thank you.

4 Mr. Li?

5 MR. LI: Very briefly, Your Honor.

6 REBUTTAL CROSS-EXAMINATION

7 BY MR. LI:

8 Q. Sir, this is a bail hearing?

9 A. I believe so. Yes.

10 Q. It's not a jury trial, is it?

11 A. Not that I'm aware of.

12 Q. It's not a fraud trial?

13 A. Not that I'm aware of.

14 Q. So all of your comments about your fraud
15 investigating techniques and all of that, it's not
16 particularly relevant to this particular case, is
17 it?

18 A. I don't know. The question was asked, and
19 I answered it.

20 Q. You're not here to give an opinion about
21 whether Mr. Ray is a danger to the community, are
22 you?

23 A. No, sir.

24 Q. You're not here to give an opinion as to
25 whether Mr. Ray is a flight risk?

1 A. No, sir.

2 Q. You haven't examined whether Mr. Ray's
3 parents are willing to put up every single piece of
4 property that they own?

5 A. No, sir.

6 Q. Same -- how about his brother?

7 A. No, sir.

8 Q. JRI is a company owned by Mr. Ray;
9 correct?

10 A. He owns the stock for JRI.

11 Q. He's the sole owner?

12 A. That's what we've been told. Yes.

13 Q. And you don't dispute the fact that JRI is
14 3.9 million dollars in the red, do you?

15 A. No, I do not.

16 Q. Now, have you ever -- in your experience
17 as a trained investigator, have you ever seen a law
18 suit in which a company that's in the red is sued
19 and the owner of the company is sued as well? Have
20 you ever seen that?

21 A. Yes, sir.

22 Q. And that's because somebody wants to get
23 the money from somebody; right? The plaintiffs want
24 to get the money; correct?

25 A. That's correct.

1 Q. And so if JRI is 3.9 million dollars in
2 debt, somebody might sue Mr. Ray; isn't that right?

3 A. They could.

4 Q. To collect the \$3.9 million?

5 A. They could.

6 Q. If I told you that, in fact, Mr. Ray has
7 been sued both in his company capacity and in his
8 individual capacity over debts, would that surprise
9 you?

10 A. Not at all.

11 Q. So that would be a potential debt to
12 Mr. Ray; correct?

13 A. What would be a potential debt?

14 Q. The \$3.9 million that the company owes.

15 A. No, sir. It wouldn't be a debt to
16 Mr. Ray. It would be a debt to JRI.

17 Q. Would it be a liability to Mr. Ray, a
18 potential liability?

19 A. No, it wouldn't. It belongs to the
20 corporation.

21 Q. But if he were sued and they collected the
22 money from him, wouldn't that be a debt to him as
23 well?

24 A. No, sir.

25 Q. When we talked yesterday, you had

1 forgotten about a \$1 million margin call, hadn't
2 you?

3 A. No, sir.

4 Q. You hadn't? I thought I had to show that
5 to you, and then you told me that, oh. Yeah. I
6 hadn't actually reviewed these documents. Somebody
7 on my staff did.

8 A. No, sir. What happened was you called it
9 a margin call. It was not a margin call. It was a
10 credit line that was called by the bank.

11 Q. Right. And there was a \$1 million debt
12 that Mr. Ray had --

13 A. I believe I told you what checking account
14 that came out of and what date it was done.

15 Q. I think actually you told me that after I
16 showed it to you. Isn't that right?

17 A. No. I was very aware of the million
18 dollars that he paid against the credit line. I did
19 not consider it to be a margin call.

20 Q. All right. Let me ask you another set of
21 questions. You had mentioned yesterday that you
22 were -- you expressed some concern about the fact
23 that JRI -- you didn't know where the money had
24 gone, where the income had gone in October,
25 November, December of 2009.

1 You remember that testimony yesterday?

2 A. Yes, sir.

3 Q. You said -- I believe you said where did
4 the money go? Where did the money go? Do you
5 remember that?

6 A. I believe I repeated that just a minute
7 ago.

8 Q. Would you agree with me that JRI's
9 financial success depends on Mr. Ray?

10 A. I believe that's true. Yes.

11 Q. That he teaches?

12 A. Yes.

13 Q. That he lectures?

14 A. Yes.

15 Q. And that people pay to attend these
16 classes and lectures?

17 A. Yes.

18 Q. Do you think that this investigation might
19 have impacted his ability to get business?

20 A. Absolutely.

21 Q. Do you think the fact that the Yavapai
22 County Sheriffs said that Mr. Ray is the target of a
23 homicide investigation might have hurt business?

24 A. Absolutely.

25 Q. Do you think that all the media attention

1 here might have had an impact on the ability of JRI
2 to earn money?

3 A. I certainly do.

4 Q. Did you know that there was an
5 investigation for the last four months?

6 A. Yes, I did.

7 Q. Did you forget to mention that yesterday?

8 A. Let me respond to that. I think I just
9 got through saying to you that I was concerned about
10 the money that was not readily available or evident
11 to us.

12 When the corporation ended in July of
13 2009, it continued through August of 2009, September
14 of 2009 and through October 6 when there was an
15 episode in Sedona. Prior to that time for the
16 previous year, there was over \$900,000 a month that
17 that corporation received.

18 You would have me believe that beginning
19 August the 1st that that money immediately stopped.
20 It didn't. I'm a fraud examiner. I am trained to
21 look at where money goes. There is two and a half
22 months of approximately \$900,000 a month that is
23 missing. I would like to know where that is as a
24 fraud examiner. I looked for that. I couldn't find
25 it.

1 One of the things that I asked for was the
2 account -- merchant account, account No. 180. We
3 did not get that account. Mr. Smyth said he gave it
4 to you, but you didn't give it to us. That is where
5 that money would have originally come. Where it
6 went from that I don't know because you didn't give
7 us the documents to determine that.

8 So when you tell me that Mr. Ray can't
9 make more income, I understand that. But for the
10 three months before that happened, there was income
11 and it was not reported on the financial statements,
12 and I asked the question where is it.

13 Q. Three months takes us into July; right?

14 A. The end of the financial statement was
15 July of 2009. So you have August, September and
16 part of October, for which there is no revenue. I
17 don't believe that the corporation just stopped on
18 July 31.

19 Q. I guess my question to you, though, is in
20 the last three months of 2009, do you think that
21 these recent events might have impacted his
22 business?

23 A. In the last three months I think it
24 severely impacted it.

25 Q. Thank you. Let me ask you a question

1 about your chart here.

2 A. Yes, sir.

3 Q. Do you have your pen available?

4 If may I approach, Your Honor?

5 THE COURT: Yes.

6 Q. BY MR. LI: This is the chart that you
7 have designed to demonstrate all of Mr. Ray's liquid
8 assets; correct?

9 A. No.

10 Q. His assets?

11 A. His assets.

12 Q. Because yesterday you said this house was
13 liquid. Is it liquid?

14 A. That is a chart that represents Mr. Ray's
15 assets. How liquid Quantum Shift is I don't know.

16 Q. Okay. I thought yesterday you said that
17 Quantum Shift was liquid.

18 A. No. You asked me if, in fact, the house
19 was liquid if it wasn't sold in three months. And I
20 indicated to you it depended on where the house was,
21 what the market was, how long it had been on the
22 market and whether there were reasonable buyers
23 there as to whether it was liquid or not.

24 Q. Let me ask you a question. If this piece
25 of property here, this Beverly Hills house, is

1 encumbered by a bond agent --

2 A. Yes?

3 Q. -- would it be liquid?

4 A. If it had an encumbrance on it, no.

5 Q. If this piece of property is needed to
6 secure a bond, it's not a liquid asset; right?

7 A. It would not be liquid in terms of
8 securing another bond. No.

9 Q. Or cash. It's not cash anymore, is it,
10 because it's been encumbered by --

11 A. Why would we be discussing if the net
12 worth was less if he already has a bond?

13 Q. I'm sorry. If this is needed to secure a
14 bond, it would no longer be liquid; correct?

15 A. Okay.

16 Q. Do you agree?

17 A. I will accept what you're saying.

18 Q. So this would not be part of his assets?

19 A. And he already has a bond, you're
20 correct? If he has a bond and he's secured that
21 property for it, what is left would be free of the
22 bond. Yes.

23 Q. So that would reduce his net worth
24 according to you by \$1.5 million?

25 A. I don't know that it would reduce his net

1 worth. I think what it would do is put an
2 encumbrance on that property. As to whether it
3 could be used for something else, but it still
4 belongs to Mr. Ray.

5 Q. Right. But it's not usable?

6 A. Not usable because it's being used for a
7 bond. Yes. I have to agree with that.

8 Q. Thank you.

9 Nothing further, Your Honor.

10 THE COURT: Thank you.

11 Mr. Hughes?

12 REBUTTAL REDIRECT EXAMINATION

13 BY MR. HUGHES:

14 Q. Mr. Echols, you haven't been provided any
15 information in all these financial documents that
16 there is a bail bond that's been issued and secured
17 with the Quantum Shift Beverly Hills property, have
18 you?

19 A. No.

20 Q. Thank you. The reason we're here today is
21 to determine what that bond should be; correct?

22 A. Yes, sir.

23 Q. Now, you were asked about margin call. Is
24 the term "margin call" a term of art?

25 A. It's used loosely to describe a lot of

1 things. Typically it's used to define when you buy
2 stock on margin and the stock value drops, there is
3 a margin call and you have to produce money to
4 reduce that margin down to acceptable limits.

5 You generally don't refer to the bank
6 coming to you and saying under the circumstances you
7 got a credit line and we're calling that credit
8 line -- you don't typically call that a margin
9 call.

10 That's just the bank saying we don't think
11 you can pay this, and we want that paid now. And
12 they want to get their money before the rest of the
13 assets are gone. So they call the line of credit.

14 Q. Mr. Ray paid that line of credit?

15 A. Yes, sir. He did.

16 Q. And the figures that you've shown today
17 don't include money that was spent out by Mr. Ray to
18 pay that line of credit; correct?

19 A. No, sir. The money was spent prior to us
20 calculating that.

21 Q. And, again, it doesn't include the
22 substantial amount of money that you indicated was
23 withdrawn from bank accounts by Mr. Ray in November
24 of '09 and you don't know where the money went?

25 A. Don't know where it went.

1 Q. And how much was that?

2 A. Approaches half a million.

3 Q. Thank you.

4 I don't have any other questions.

5 THE COURT: Thank you.

6 Mr. Li?

7 MR. LI: Nothing more, Your Honor.

8 THE COURT: Mr. Echols, you may step down.

9 Mr. Hughes?

10 MR. HUGHES: Your Honor, the state has no
11 additional rebuttal witnesses or evidence.

12 THE COURT: Mr. Hughes and Mr. Li, Mr. McGroder
13 expressed an interest yesterday that views of
14 alleged victims be heard. I would like to do that
15 at this point if there are people that want to do
16 that.

17 MR. HUGHES: I believe there are, Your Honor.
18 I think Miss Lily Clark is here, and I believe that
19 Mr. Magnanini is on the telephone along with the
20 Browns. And I believe that Shannon Clark is here.

21 MR. MAGNANINI: That's correct, Your Honor.

22 MR. HUGHES: I don't know which order you want
23 them to start in if any of them wish to make
24 comments.

25 THE COURT: Why don't we start with people who

1 are appearing telephonically, the Browns
2 Mr. Magnanini. If someone would choose to make --
3 wishes to make a statement.

4 MR. MAGNANINI: Yes, Your Honor, my clients
5 Mr. George and Ms. Virginia Brown had wanted to make
6 a statement.

7 THE COURT: Okay. Go ahead with that now,
8 then, please.

9 MR. BROWN: Your Honor, George Brown here. I
10 just wanted to bring to the Court's attention in
11 March of '09 and again in May of '09 Ray stood on
12 stage and told his audiences that he had made
13 \$10 million that year and that if they wanted to do
14 the same, they need only to follow his methods and
15 his directions.

16 My question is now he says his JRI is
17 bankrupt. Was he lying in May and March or is he
18 lying now?

19 THE COURT: That's your statement, then,
20 Mr. Brown?

21 MR. BROWN: Yes. Thank you. My wife would
22 like to say something also.

23 THE COURT: Thank you, sir.

24 Yes, ma'am.

25 MS. BROWN: My greatest concern is that this

1 crime, as Mr. Ray refers to it as an accident, that
2 it happened under the practice of his craft. And my
3 concern is that he should not be allowed to practice
4 that craft to dupe any other people to follow and
5 believe in his directions. That's my greatest
6 concern. I don't want to see anyone else hurt.

7 MR. BROWN: He's a purveyor of that product.
8 That product is defective. There are at least 3 to
9 4 people dead left and maybe 30 people wounded by
10 that product. If this was a product recall, it
11 would be off the market now until it was determined
12 whether that product was safe.

13 MR. MAGNANINI: Your Honor, I believe that was
14 the two main points we had wanted to make, that
15 Mr. Ray had preached at seminars that he was
16 successful. We believe he said you shouldn't be
17 involved with banks. You should have enough money
18 to purchase your real estate without resorting to
19 banks and that by following his program you too
20 could be as well as off as he is.

21 And then the other concern we have is that
22 most of the money, it seems, that he had has been
23 moved or gone other places.

24 One concern I actually have as an attorney
25 is the idea that he took a million dollars or more

1 and gave it to his attorneys and put it in their
2 trust account. I think in same way one cannot turn
3 documents over to their counsel and then claim that
4 they're privileged under the attorney/client
5 privilege, one should not be allowed to pay in
6 advance your legal fees by putting money into the
7 attorneys' trust and then saying that they don't
8 have sufficient funds for a bond and, therefore,
9 Your Honor should lower their bond.

10 And then, as my Aunt said, the second
11 point to take from this is if bond is lowered and
12 Mr. Ray is released, at least our family would ask
13 that he not be allowed to continue to practice his
14 seminars, which is why we're here in this
15 situation.

16 Thank you, Your Honor. That's all we
17 have.

18 THE COURT: I've noted your views. Thank you.

19 Mr. Hughes, does Miss Clark --

20 MR. MAGNANINI: Thank you.

21 MS. BROWN: Thank you, Your Honor.

22 THE COURT: Ms. Clark, if you want to make a
23 statement, please proceed.

24 MS. CLARK: Thank you, Your Honor. I have
25 submitted a victims' impact letter opposing the

1 reduction of his bond. I would like to reaffirm
2 those concerns and objections right now. And I
3 thank the Court for this opportunity and your
4 consideration.

5 THE COURT: Thank you.

6 Counsel, I've been told that statement has
7 been provided to both parties.

8 MR. HUGHES: It's been provided.

9 MR. LI: It has, Your Honor.

10 THE COURT: Okay.

11 And then Mr. Clark.

12 MR. CLARK: Your Honor, thank you very much.
13 My partner, Pat Mr. McGroder, and I represent the
14 Shore family, the immediate family -- James Shore;
15 his wife, Alissa; his three children, all of whom
16 are under the age of 12 -- his mother, Jane. And
17 we're also here on behalf of his extended family.

18 As probably many people in the room know,
19 the Shore family has been conspicuously absent from
20 a lot of media inquiry into this. They have
21 declined interviews during their grieving period.

22 But they have asked me today to express
23 publicly their appreciation for the efforts of the
24 Yavapai County Sheriff's Department, for the work
25 that has been done and most importantly for their

1 compassion and dedication.

2 Also to express our thanks to the county
3 attorney's office for the work that has been done on
4 behalf of all the victims and lastly to
5 Miss Moreton.

6 Thank you for keeping the family in
7 contact. It's very helpful during this difficult
8 time.

9 As far as the substance, Your Honor, of
10 why everybody is here today, the Shore family does
11 not have a position either in support of or in
12 opposition to the choice that's before the Court.

13 They are and remain confident in the civil
14 and criminal justice system in Yavapai County. They
15 understand that whatever decision is reached here
16 today will not affect or bear any indication upon
17 Mr. Ray's guilt or innocence.

18 And really they believe that the choices
19 that you will have to make today as far as whether
20 Mr. Ray poses a flight risk, whether he is a threat
21 to the community if he is released, are decisions
22 that you will reach fairly and after reasonable
23 consideration of the evidence that's been
24 presented.

25 Really the family wants to just ensure

1 that Mr. Ray is given and treated no better, no
2 worse, than any other citizen in this country
3 accused of a crime. They have complete faith in
4 this process and thank you for listening to the
5 evidence carefully.

6 THE COURT: Thank you.

7 Then I would like to hear arguments.

8 MR. HUGHES: Thank you, Your Honor. Your
9 Honor, the initial setting of bond in this matter,
10 \$5 million bond was set. Now that the state has had
11 an opportunity to review the financial records and
12 hear the testimony in this matter, the state
13 believes that an appropriate bond would be
14 \$1.5 million.

15 Your Honor, the Arizona Revised Statute
16 sets forth the number of factors the Court is to
17 consider in determining a bond amount in a case.
18 One of those factors, as the Court is well aware, is
19 the defendant's financial worth and situation.

20 The Court has heard quite a bit of
21 testimony over the last several days. It's the
22 state's position that Mr. Echols's testimony is
23 persuasive and authoritative and uncontradicted that
24 Mr. Ray's net worth is at least \$2 1/2 million in
25 addition to the one half million dollars in cash

1 that has turned up missing in November of '09 and
2 the approximately \$1 million that was provided to
3 the different law firms.

4 The Court has heard testimony from
5 Mr. Smyth that he has seen bills from a law firm for
6 less than half a million dollars. There has been no
7 evidence -- and I would stress that point to the
8 Court. No evidence has been presented to the Court
9 of law firm fees in excess of that amount.

10 Now, certainly in determining a
11 defendant's financial picture, the Court should look
12 at all of his assets even if he has chosen to hand
13 those assets over to a law firm. Certainly a law
14 firm has a right to be paid and earn its fees, but
15 in this case has chosen for whatever reason to not
16 provide evidence as to what those fees are and what
17 has been earned at this point.

18 And so I think the only evidence available
19 to the Court is that additional amount is available
20 as an asset in this case.

21 Now, another factor the Court is to
22 consider is the nature and circumstances of the
23 offense and the weight of the evidence against the
24 defendant. As the state requested in its response
25 in the motion to reduce bail, we request that the

1 Court review the Grand Jury transcript in this
2 matter. We provided the Court with the appropriate
3 citation to the case law that allows the Court to do
4 that.

5 Contrary to newspaper reports and
6 television reports, which sometimes are relatively
7 accurate and sometimes just don't have all the
8 picture, that evidence is the evidence that's in the
9 record. It's been available now to both sides, and
10 the case law allows the Court to consider that. We
11 would ask the Court to do that.

12 In addition, the statutory factors ask the
13 Court to consider the defendant's ties to the
14 community. There are no ties to Yavapai County
15 apart from the week-long approximately events that
16 Mr. Ray has held in the general Sedona area outside
17 the city limits of Sedona for the last number of
18 years. There are no ties. There is no real
19 property here. There is no family here. There is
20 no business assets here.

21 And quite honestly, Your Honor, those ties
22 to California the Court has heard evidence are
23 rapidly disappearing as well. Certainly Mr. Ray's
24 business because of the events in the rural area
25 outside of Sedona have caused the business to shut

1 down, and the business is winding down. There are
2 no longer employees of any great number.

3 And the bank accounts, the Court has
4 heard, have been largely liquidated. The
5 corporation is insolvent. There are civil creditors
6 that are filing lawsuit over the debts.

7 And Mr. Ray's significant asset, the
8 Beverly Hills home, has been put up for sale --
9 which is his last significant tie to California. I
10 think those need to be considered.

11 In the Grand Jury transcript the Court
12 will see that mention was made that Mr. Ray, as the
13 James Ray International, which is an international
14 corporation, has traveled to South America. Your
15 Honor, that information is relevant in determining
16 if Mr. Ray will avail himself and continue to come
17 to court, not next week or next month but a year
18 from now or a year and a half from now, if this case
19 drags on that long. And we hope it won't, and we
20 know the Court is anxious to set an early trial
21 date. And the state will be requesting that.

22 But these cases, a triple homicide case,
23 have a way of taking time. And we want a bail
24 amount and are requesting a bail amount that will
25 ensure Mr. Ray's continued appearance throughout the

1 entire proceedings, not just for the next few weeks
2 or months while he has -- you know -- money in the
3 bank and a reason to stay here but through the
4 entire proceedings.

5 Your Honor, certainly the fact that
6 Mr. Ray voluntarily came to Arizona when his
7 attorneys got wind that there was going to be or
8 possibly could be a grand jury proceeding, I think,
9 is a factor that mitigates in his favor. And the
10 Court recognizes that -- or the state recognizes
11 that and would ask the Court to recognize it.

12 But in light of all the other factors, the
13 statutory factors, including the views of the Neuman
14 family, I think, which the Court needs to consider,
15 the fact that this is a triple homicide that carries
16 a presumptive sentence of five years for each count,
17 the state would ask that the Court impose a
18 1.5 million bond, which is significantly less than
19 the testimony the Court has heard is his net
20 financial worth.

21 Your Honor, in addition, as far as
22 additional release conditions, the state would ask
23 that the Court seize the passport. We've seen some
24 pleadings that perhaps Mr. Ray's law firm may have
25 possession of that passport. We would ask that it

1 be turned over to the Court, that the Court restrict
2 Mr. Ray's travel. Certainly that the rules talk
3 about restricting travel from Arizona. Certainly
4 Mr. Ray has family in California. And if he wishes
5 to go back to California, we wouldn't oppose travel
6 from Arizona to California. But we would ask the
7 Court restrict further travel from California or
8 Arizona and would -- that the Court would order
9 there be no international travel.

10 Thank you, Your Honor.

11 THE COURT: Thank you.

12 Mr. Li?

13 MR. LI: Thank you, Your Honor.

14 MS. BROWN: Bailiff, could you please have them
15 direct the comments to the mic, please.

16 THE COURT: We'll do that.

17 MS. BROWN: Thank you.

18 MR. LI: Your Honor, thank you very much for
19 the opportunity to address the Court. Mr. Ray has
20 been in custody now for three weeks in solitary
21 confinement. He's a 51-year-old author who has been
22 sitting there in his cell the size of this area
23 right here for the last three weeks.

24 The state has not granted or agreed to an
25 expedited hearing, notwithstanding the fact that

1 when they wanted a gag order, they wanted an
2 expedited hearing.

3 Let's talk about what this hearing is
4 about and what it's not. This is a bail review
5 hearing. It's not a question -- it's not an audit.
6 It's not a financial fraud case. This is simply
7 whether under Rule 7.2 the state can prove that
8 Mr. Ray is a danger to the community and whether
9 he's a flight risk. That's all.

10 As a side note, Your Honor, I would note
11 that just today I read that Jason Williams, an NBA
12 player who was convicted and sentenced for shooting
13 and killing somebody, is out on bond at \$275,000. I
14 understand that people in the NBA make a lot of
15 money.

16 So I would suggest that while a person's
17 net worth is of some relevance, it is not of the
18 relevance the state has put upon it. Otherwise, if
19 Bill Gates got in an accident in Yavapai County and
20 hurt somebody, we would be hearing that the bond
21 should be set at \$2 billion. And that's just not
22 what the standards are. That's not what the rules
23 are under 7.2. And there is no jurisdiction in the
24 United States that has that rule.

25 Let's look at the actual facts. Mr. Ray

1 is charged with probation eligible offenses. He has
2 no criminal history. The crime for which he stands
3 charged is not violent. This was an accident.
4 Nobody disputes that. He has no history of
5 violence. He is not an illegal alien. He does not
6 have a history of failing to appear in court.

7 His parents stand ready to put up every
8 single piece of property they have. His brother
9 stands ready to put up every single property he
10 has. Mr. Ray stands ready to put his only valuable
11 asset, his house.

12 He has known about this criminal
13 investigation, which has been called a "homicide
14 investigation" from the beginning, for four months
15 and he has dealt with the state responsibly. He has
16 provided information to the state regarding his
17 defenses. He's provided witnesses to the state.
18 He's flown them here at his own cost. Mr. Hughes
19 himself has interviewed former employees of JRI.

20 He was prepared to meet with Ms. Polk and
21 Mr. Hughes and literally stopped at the airport.
22 This is to give a statement. He's literally stopped
23 at the airport with his bags checked.

24 MR. HUGHES: Your Honor, I'd object. The
25 number of these comments are pertaining to things

1 that simply are not in evidence or not on the
2 record.

3 MR. LI: I think this is actually in my
4 declaration. So it is in evidence.

5 THE COURT: It's an argument.

6 Proceed, Mr. Li.

7 MR. LI: Thank you.

8 Two days after that effort to meet with
9 Mr. Hughes and Ms. Polk, we did -- we were worried
10 that they might actually bring an indictment. And
11 so I personally brought Mr. Ray to Yavapai County
12 for the purpose of surrendering him come what may.

13 And on the morning of the 3rd I walked in
14 to Mr. Hughes's office and I tried to see him,
15 couldn't see him. I went to see Detective Polling
16 and Lieutenant Rhodes. And I said "Mr. Ray is here,
17 come what may. He's in Tom Kelly's office. If you
18 want -- he's right there. If you want to prebook
19 him, he's there. He's ready to face these
20 charges."

21 After that when the indictment was
22 returned, Mr. Ray was arrested without incident.
23 And I think the detectives that are here would agree
24 with that. On a side note, I asked
25 Lieutenant Rhodes before they left --

1 Detective Polling was there as well. I asked
2 Lieutenant Rhodes, look. We've surrendered him
3 here. Let's not do the perp walk thing. And he
4 said, "Okay." And I see Detective Diskin, and they
5 did a purpose walk anyway.

6 Rule 7.2 provides that any person charged
7 with an offense bailable as a matter of right shall
8 be released pending or during trial on the person's
9 own recognizance.

10 And I would submit that the state has
11 proved nothing. They have not proved that he's a
12 danger to the community. They have not proved that
13 he's a flight risk. And under these circumstances,
14 Rule 7.2 requires -- it says "shall release the
15 defendant on his own recognizance."

16 There is no dispute that this case is a
17 case that's bailable as a matter of right. And so
18 it absolutely applies to this case.

19 But here the state now continues to insist
20 on a \$1.5 million bond now, notwithstanding over the
21 weekend it was 1 million, and notwithstanding the
22 fact that when I had a conversation with Mr. Hughes
23 about two weeks ago, I asked him, look. If we give
24 you all this information, what are you looking for?
25 What is his bond worth? He said a couple hundred

1 thousand.

2 He later on Saturday wrote me an email
3 saying, listen. I'm not sure about that. I'm going
4 to add some more conditions. That's what this case
5 is actually worth, if anything.

6 Rule 7.2 provides that if bond must be
7 made, the Court may impose the least onerous
8 conditions contained in these rules. The least
9 onerous conditions. What the state is, essentially,
10 asking him to do is sell his jewelry, sell his car,
11 hand over all of his -- all the money that he was
12 going to use to fund to fight this case in court, in
13 this court or in the Yavapai County courtroom,
14 anywhere. To fight this case.

15 What the state is asking is for Mr. Ray to
16 choose between getting out of custody, getting out
17 of solitary confinement or funding his defense to
18 fight the state on what he believes are unjust
19 charges.

20 A defendant is presumed innocent in
21 determining bail. This is under Gusick vs Boies.
22 There are some additional factors that that case,
23 the Gusick case, cites that I believe bear
24 mentioning. Bail exacted -- bail is exacted for the
25 sole purpose of securing the attendance of the

1 defendant. Any bail fixed at more than is necessary
2 to secure the appearance is excessive within the
3 meaning of The Constitution.

4 An aroused state of public opinion against
5 one accused of a crime is no grounds for fixing
6 excessive bail. That's 72 Ariz 233, 236 and seven.

7 I will point out one more factor, Your
8 Honor. This Arizona Supreme Court noted and
9 permitted as mute evidence the fact that a defendant
10 is, in fact, unable to meet the bail and remains
11 incarcerated. In Mr. Gusick's case that was a
12 little over a month. In Mr. Ray's case it's been
13 three weeks.

14 The Arizona Supreme Court specifically
15 indicated that the fact that a defendant cannot get
16 out on bond is evidence that he simply does not --
17 that the bail is excessive.

18 I want to give a little history, Your
19 Honor, and I know the hour is running late. I would
20 beg the Court's indulgence. A little bit of the
21 history. We did talk to Mr. Hughes this weekend
22 about trying to get him out, Mr. Ray out on a
23 \$1 million bond. We were unable to do so. You
24 heard from the bail agent himself who said he would
25 not give 1.5 million in equity for that house.

1 So it doesn't actually matter what
2 Mr. Echols thinks the house is worth. It's only
3 worth \$200,000 for the bondsman. And that's the
4 house Mr. Ray needs to secure to get out, to be able
5 to post the bond.

6 In an effort to demonstrate to the state
7 that Mr. Ray does not have the resources that the
8 state believes he does, we voluntarily provided to
9 Mr. Hughes and Ms. Polk and the Yavapai County
10 Sheriffs and everybody and Mr. Echols his bank
11 account records, his personal tax returns, his
12 company tax returns, his company's business
13 records. This was voluntary, Your Honor. It was
14 not pursuant to process. It was voluntary.

15 I want to note, Your Honor, because this
16 is very important. The state has had four months to
17 investigate this case. They have seized eight
18 computers, an I Pod, all sorts of things belonging
19 to Mr. Ray and his company. They've had months to
20 do their homework about what Mr. Ray's financial
21 resources actually are worth. And you heard from
22 Mr. Echols himself that he was not engaged to
23 actually look at any of this until the last week.

24 And with all due respect, I think this
25 constant attempt to portray the defense as somehow

1 trying to hide the ball, in light of all these
2 facts, in light of the fact that we brought people
3 here, in light of the fact that we surrendered
4 Mr. Ray, in light of the fact that my partner, Brad
5 Brian, and I met with Ms. Polk and Mr. Hughes and
6 the fact that we surrendered Mr. Ray, the fact that
7 we handed all of these documents over to the state,
8 I think the fact -- the idea that Mr. Hughes and
9 this implication that somehow the defense is hiding
10 the ball is offensive.

11 The math is simple, Your Honor. Even if
12 you took into account what we don't agree with,
13 Mr. Echols's report here -- really if you -- I don't
14 have it in front of me. If you take out the house,
15 basically, the total assets that Mr. Echols thinks
16 Mr. Ray has is 900,000. You heard on the stand from
17 Mr. Smyth it was about half a million. So the delta
18 really is about \$400,000.

19 I would submit that Mr. Echols got it
20 wrong, that he attributed value to property that
21 doesn't have that value. But, basically, the delta
22 is pretty close. I think he attributed \$400,000 or
23 so to the value. We attribute nothing because it's
24 in foreclose. Okay.

25 So there is no fraud here. This is just

1 he wants to present it one way. We present it
2 another way. The delta is very close.

3 And I would also submit that Mr. Echols is
4 just looking at this for a few days. Mr. Smyth was
5 the bookkeeper for years. And he has no reason to
6 lie. He's just here to testify. He has other
7 clients.

8 And you heard from the bail bondsman. He
9 thinks that this -- that the maximum, the maximum
10 supportable is \$600,000. We submit it should be
11 much lower. We submit that that's not the least
12 onerous that Rule 7.2 requires.

13 In the end, Your Honor, this is not
14 intended to be a negotiation. We're not here to
15 bargain with the state about what value should be
16 attributed to a man's liberty. We're not here to
17 argue with whether Mr. Ray should pay \$600,000,
18 \$200,000, 1.5 million. What we're here to do is
19 determine what the right amount is under the
20 Constitution and under Arizona law.

21 Your Honor, Mr. Kelly has been practicing
22 in this very courthouse for 23 years. He's never
23 seen anything like this. I'm the son of
24 immigrants. Ms. Do herself is an immigrant. Both
25 our families fled Communism, me from China, her from

1 Vietnam. We didn't plan to be working together on
2 this case. This is not an intentional thing that
3 the two of us on this case. That's just what it
4 is.

5 And we have both been public prosecutors
6 in prior parts of our career. So between us we have
7 20 years of prosecutorial experience, me as an
8 assistant U.S. attorney, Ms. Do as a deputy district
9 attorney in Los Angeles. And we have never seen
10 anything like this.

11 And in our hearts we believe deeply in
12 this system, deeply that the rules should be
13 followed and that courts and Your Honor and people
14 like you, Your Honor, will follow the rules and
15 bring justice.

16 Because what's happening here is just
17 wrong. It's just plain wrong. It's like the state
18 created special rules for Mr. Ray, that Mr. Ray
19 should get the highest bond bail amount in Yavapai
20 County history when all the evidence suggests
21 otherwise, when they've done no work to determine
22 what Mr. Ray's financial resources actually are
23 before the bond was set.

24 And on another note, Your Honor, I'd move
25 to strike those portions of the state's papers that

1 rely on the opinion of Detective Diskin. He did not
2 testify. And I would ask the Court why didn't he
3 testify.

4 And the reason is because he would have to
5 get on the stand and admit that the reason why the
6 bond was set at \$5 million was because he went on
7 some website and saw that the revenue for JRI one
8 year was 9.4 million. Didn't care about the cost
9 and taxes and what have you.

10 Your Honor, I thank you very much for your
11 indulgence. And I'd ask that you set bond in the
12 amount appropriate to this case, an amount that
13 Mr. Hughes himself thinks is appropriate, a couple
14 hundred thousand, an amount that would be the
15 appropriate amount in any court in this land.

16 Thank you, Your Honor.

17 THE COURT: Thank you.

18 Mr. Hughes?

19 MR. HUGHES: Your Honor, if I can reply.
20 Mr. Li has a number of times mentioned conversations
21 that he and I have had. And the only way I can
22 characterize it is a mischaracterization of those
23 conversations. I haven't seen that in a long time.

24 And I'm most likely going to be proceeding
25 in the future by requiring our communications to be

1 in writing, which is something that in all the years
2 I've been a prosecutor in this county, I think I've
3 only done that once before.

4 Your Honor, with respect to our
5 negotiations, which I would submit to the Court were
6 instigated or begun by Mr. Li regarding the bond
7 amount, we would respond when he first asked me a
8 bond amount I thought was appropriate was based on a
9 conversation he and I had in Mr. Kelly's office on
10 the morning of the initial.

11 And in that conversation Mr. Li went to
12 great lengths to argue to me that his client hadn't
13 earned the sort of money that was reported and said
14 that the amount of money that his client earned in
15 income was at most ever in the hundreds of thousands
16 of dollars. And I said okay. If that's correct,
17 then we're probably looking at a bond amount in the
18 hundreds of thousands of dollars.

19 Mr. Li later provided us with tax returns
20 that showed a 2008, which is his most recent tax
21 return, adjusted gross income of millions of
22 dollars, Your Honor, nearly \$5 million. And that's
23 in the records that have been submitted into
24 evidence.

25 Over the weekend when I spoke to Mr. Li --

1 and again he left this part out -- I told him the
2 million dollars is because we just started reviewing
3 some of the most recent documents that you provided
4 us. The Court seized the huge stack of documents
5 there. Those are sent to us by email. And we had
6 to start reviewing those. And I sent them down by
7 email to Richard Echols.

8 He was going to work all weekend long. He
9 already started to review the first documents. I
10 told him based on Mr. Echols's review of the first
11 voluminous amount of documents that were provided to
12 us, we thought that provided things didn't change, a
13 million dollars might be appropriate.

14 But I told Mr. Li the caveat to that is if
15 Mr. Echols finds additional amounts when he
16 continues his work, our recommendation will be
17 higher.

18 Mr. Echols has testified to the additional
19 amounts that he's found, including the 500,000 that
20 was taken out of bank accounts in the November of
21 2009 -- the liquid asset that we didn't know about
22 before we got those bank account records, and
23 including other funds that were raided or removed
24 from White Wolf and from other accounts in November
25 of '09. Mr. Li didn't point out that part of our

1 conversation.

2 The defense has argued the Gusick case,
3 which is a 1951 case. And that case is discussed in
4 the state's response. Gusick applies and was based
5 upon what the Court said was uncontroverted evidence
6 the defendant did not possess the financial means,
7 property or resources to post a substantial bond.

8 And then the Court went on to say we find
9 in addition, because there was uncontroverted
10 evidence he didn't have those means and because he
11 was still sitting in jail, the Court found that the
12 bond was excessive.

13 But you can't look at part of a court's
14 ruling without looking at what the Court held as the
15 basis for its ruling, which was the uncontroverted
16 evidence.

17 In this case the Court has heard, I would
18 argue, uncontroverted evidence that Mr. Ray does
19 have the financial means to post the \$1.5 million
20 bond.

21 Mr. Li is correct that a bond has to have
22 a rational purpose. In this case -- and I found
23 what he had to say about the Communists moving. But
24 in this case what we're looking at is what the
25 statute asks the Court to look at, which is amount

1 necessary to reasonably assure that Mr. Ray will
2 continue to appear in this proceeding today,
3 tomorrow, a month from now or even a year from now
4 if that's how long it takes for the proceedings to
5 end.

6 In ascertaining what an amount should be,
7 the statute provides a number of factors. And I
8 won't go through them again. But it's illustrated
9 to point out that many of those factors mitigate
10 towards the fact that Mr. Ray is, at least according
11 to the statutory factors, a flight risk. He's
12 losing his ties to California rapidly. He has no
13 ties whatsoever to this community. And he's facing
14 a triple homicide charge in Yavapai County.

15 Now Mr. Li has attributed comments to
16 Mr. Kelly. And I presume that they're correct. But
17 I'd also argue that at least in my memory this is
18 the only triple homicide case that we've had in this
19 county for a great period of time.

20 It's a different set of circumstances when
21 you cause the death even recklessly of three
22 different people. And those are the factors that at
23 some point when we get to a sentencing we'll be
24 asking the Court to consider in determining
25 appropriate sentence.

1 But that is time that Mr. Ray needs to
2 continuer to appear at that far into the future.

3 Now, Mr. Li again said well, Mr. Ray was
4 ready to get on a plane to fly out here and met meet
5 with us. We have no reason to disagree with that.
6 But the preconditions that Mr. Ray demanded before
7 he could meet with us and before he would agree to
8 let us ask him what happened were onerous to the
9 point we couldn't reach an agreement that would
10 allow him to come out here.

11 Mr. Li indicates his client is in solitary
12 custody. I've been informed it's protective
13 custody. And that happened after I believe his
14 lawyers were on television making comments and the
15 other inmates saw those televised proceedings inside
16 the jail. And the decision was made to move him
17 into protective custody. It's not solitary
18 confinement.

19 There are 250 bondsmen approximately in
20 Arizona. And you've heard of an attempt to go to
21 one bondsman. You haven't herd of any other
22 attempts to go to other bondsmen. And I think that
23 should go to the weight of Mr. Wilhelm's testimony.
24 Are there other bondsmen out there who might look at
25 the situation differently?

1 Mr. Li said he's provided us all the
2 records we requested. And there is the email that I
3 asked Mr. Smyth about, which is in evidence, where
4 we asked for documents of all bank accounts. And
5 the defense stipulated they did not provide us the
6 merchant account.

7 Mr. Echols testified he didn't include
8 what he suspected would be in that merchant account
9 in the net worth. But he also said that based on
10 the income that James Ray International was
11 receiving, he would have expected to see 800 to
12 \$900,000 a month for the months of August and
13 September and the first portion of October until the
14 incident near Sedona happened.

15 I think it's curious at best that the
16 account that would contain those funds was the
17 account that was not provided despite our request.

18 Moreover, the tax returns. We were
19 provided only the first page or couple pages but not
20 the portions that Mr. Echols indicated would provide
21 a clear picture of the defendant's finances.

22 Finally, Your Honor, I know that, although
23 it's a minor point, Mr. Echols clarified that he had
24 been engaged the week before last and not last
25 week. The state has brought up, I believe, in a

1 teleconference between the parties and the Court,
2 the state could not begin looking into Mr. Ray's
3 financial ability to pay a bond until the defense
4 was either willing to give us a records release,
5 which they wouldn't give us, for his financial
6 documents or until the defense provided them to us.

7 And they've been coming -- the financial
8 records have been -- and I do give the defense
9 credit. They could have told us to pound sand and
10 not given us anything. Although, I think the Court
11 would have considered that as a mark against the
12 defendant in considering the statutory factors.

13 But the financial documents -- once they
14 began to come in and we received them, is when the
15 state went through the process, which took a little
16 period of time to engage the Rocky Mountain Network.

17 Your Honor, for all the reasons the
18 statute sets forth the factors the Court is to
19 consider, the state again requests the 1.5 million
20 bond as a reasonable amount of bond to ensure the
21 defendant's continued, and, furthermore, the
22 additional conditions including the restriction on
23 travel and seizure of the passport.

24 Thank you.

25 THE COURT: Thank you.

1 Hundreds of pages of documents have been
2 submitted to the Court. I want to make sure I have
3 what the parties intend for me to consider.
4 Exhibits 1, 4, 5 and 6 were admitted. Assuming I'm
5 considering the information there. Exhibit 7 -- I
6 did direct that would be marked. That was the list
7 of potential collateral that was provided to the
8 bondsman. I don't think it was marked or
9 submitted. I don't know if anyone intended that.

10 MR. LI: Your Honor, we don't intend that. But
11 shouldn't -- all of these things are in evidence.
12 Not in evidence. I mean all of these things have
13 been filed with the Court as properly noticed
14 motions -- all of the various documents.

15 THE COURT: I just want to make sure that I'm
16 considering what people intend me to consider.
17 Ms. Polk calling my attention yesterday that
18 Exhibit 3 contains documents where I granted the
19 motion to strike. So what I did is I had those
20 documents placed in a sealed envelope and haven't
21 seen them. I'm not considering them.

22 MR. HUGHES: And, Your Honor, the state has not
23 seen the contents of Exhibit 3. It's the state's
24 belief that exhibits 1, 4, 5 and 6 were admitted,
25 that the Court directed Exhibit 7 to be marked for

1 purposes of identification. We've not asked that it
2 be admitted. We merely ask it be retained in the
3 record for purposes of record.

4 THE COURT: I need a copy of that, then.

5 MR. LI: Your Honor, with due respect, we'd ask
6 that, essentially, all of the pleadings that we have
7 filed as part of the duly noticed motion be placed
8 before the Court and admitted because this is not a
9 trial. This is simply a motion.

10 THE COURT: It is. And I will consider the
11 pleadings also. Anything that's been exchanged I
12 will consider.

13 MR. LI: Thank you, Your Honor. I want to make
14 sure the fact that they're not admitted --

15 MR. HUGHES: Is that the exception of the third
16 declaration?

17 MR. LI: Right. With the exception of my third
18 declaration.

19 MR. HUGHES: Your Honor, it's my understanding
20 that these declarations would be considered by the
21 Court, and I don't have a problem with that.

22 THE COURT: Thank you.

23 There will be a modification of release
24 conditions. I'm going to issue a written ruling and
25 order this week. It will be this week. The other

1 thing I discussed earlier was the setting of a
2 trial. I can do that if either party wishes to do
3 that at this time, or that's something that can be
4 taken up at the next management conference.

5 MR. LI: Your Honor, there are a lot of
6 schedules I have to coordinate. So if we can do
7 that at the next scheduled conference, I hope the
8 state doesn't object.

9 MR. HUGHES: That's fine by the state, Your
10 Honor.

11 THE COURT: Then anything further, Mr. Hughes?

12 MR. HUGHES: No, Your Honor.

13 THE COURT: Mr. Li?

14 MR. LI: No, Your Honor.

15 THE COURT: Thank you. We will adjourn.

16 (The proceedings concluded.)

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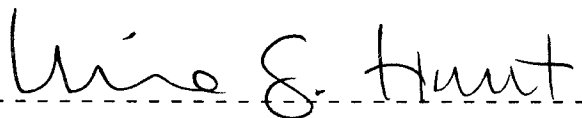
1 STATE OF ARIZONA)
2 COUNTY OF YAVAPAI) ss: REPORTER'S CERTIFICATE

3 I, Mina G. Hunt, do hereby certify that I
4 am a Certified Reporter within the State of Arizona
5 and Certified Shorthand Reporter in California.

6 I further certify that these proceedings
7 were taken in shorthand by me at the time and place
8 herein set forth, and were thereafter reduced to
9 typewritten form, and that the foregoing constitutes
10 a true and correct transcript.

11 I further certify that I am not related
12 to, employed by, nor of counsel for any of the
13 parties or attorneys herein, nor otherwise
14 interested in the result of the within action.

15 In witness whereof, I have affixed my
16 signature this 16th day of May, 2010.

17 
18 -----

19 MINA G. HUNT, AZ CR No. 50619
20 CA CSR No. 8335